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### SYNOPSIS

The present writ petition under Article 32 of the Constitution of India is being filed by the Petitioner, thereby, challenging the constitutional validity of the Uttarakhand Freedom of Religion Act, 2018 (**The Act**) and the passing of the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020 (**The Ordinance**). The Petitioner humbly submits that both the Act and the Ordinance have been enacted/brought in place *ostensibly* to provide freedom of religion by prohibition of conversion from one religion to another by misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means or by marriage and for the matter's incidental thereto.

The Petitioner humbly submits that the provisions of the impugned Act and Ordinance, both violate Article 21 of the Constitution as it empowers the State to suppress an individual's personal liberty. The impugned laws lay down the procedure to be followed by people who wish to convert from one religion to the other, not restricting to only inter faith marriages. The Act and Ordinance seemed to be premised on conspiracy theories and assume that all conversions are illegally forced upon individuals who may have attained the age of majority. It mandates that a series of complicated procedures to be followed before and after conversion, taking the State into confidence to "ensure" that the act was an informed and voluntary decision by the individual. These provisions in both the impugned Act and Ordinance place a burden on individuals to justify their

personal decisions for State approval. It is the case of the Petitioners that this is a notion that is constitutionally repugnant and against a citizen's right to freely exercise his/her freedom of choice. The provisions of the impugned Ordinance and Act impinge upon an individual's right to freedom of choice, right to life and liberty as well as right to freedom of religion.

The Petitioner humbly submits that the Indian citizens enjoy the Right to Privacy as a fundamental right but the Act and the Ordinance (Uttarakhand and Uttar Pradesh) are unconstitutional as both attempt to control the life of the residents of Uttarakhand and Uttar Pradesh and to not allow them to take charge of the significant decisions in their life. The Act and the Ordinance allow for an unnecessary intrusion in the lives of people who have their autonomy compromised by the State. It is submitted that when the individuals have to approach the District Magistrate to validate their conversion for purpose of marriage or otherwise, violates this very right to privacy and disempowers individuals.

The Petitioner humbly submits that Article 25 of the Constitution provides every individual the 'freedom of conscience' and free profession, practice and propagation of religion. That this freedom of conscience entails that one can be non-religious and exercise the right to conscience or be religious and exercise the same right. That the decision to include the term propagate with profess and practice was in effect a recognition of India's plural, diverse and multi-faith reality that goes back centuries. That the Sanatan Hindu faith while not obviously proselytizing have, also from the period of Early India to

Medieval India, by co-option absorbed those from Adivasi, Indigenous and Subaltern Faiths that were not until this co-option “Hindu.” Hence as a necessary corollary of the group right of a religion to propagate, an individual must have the right to convert to any religion other than his own. Hence, the right to convert oneself to another religion is manifested in Article 25 of the Constitution. The Ordinance and the Act impinge upon this right by imposing unreasonable and discriminatory restrictions on it by mandating that the administration be informed of such intention and a probe be launched in such a personal and intimate exercise of one’s right.

The Petitioner humbly submits that Article 14 of the Constitution of India provides that every citizen is equal before the law and that everyone is subject to the same laws of justice. Further, Article 15 and 16 enjoin on the State to treat all Citizens without Discrimination. With the Act and Ordinance in place, only residents of Uttar Pradesh and Uttarakhand will be subject to such inquiry and State intervention if and when they decide to convert from one faith to the other. “Illegal” conversion under the Ordinance attracts a punishment of 1-5 years in prison under section 5. However, if the victim of the illegal conversion is a minor, a member of the Scheduled Castes or Scheduled Tribes or, a woman, the punishment is doubled at 2-10 years behind bars. That in cases of inter-faith marriages, it is reportedly usually women who convert to men’s religion and it is therefore the harsher punishment i.e. upto 10 years imprisonment which would be invoked in most cases. The provision views all women including economically weak, marginalised, privileged women to be susceptible to illegal conversions. The

Ordinance states that the burden of proof as to whether a religious conversion was effected through misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means or by marriage, lies on the person who has caused the conversion and, where such conversion has been facilitated by any person, on such other person. Ordinarily, in criminal cases, the Burden of Proof is on the prosecution to prove the guilt whereas the accused is treated innocent until proven guilty. It is only under this Ordinance, the burden of proof gets shifted and it is dangerous as it is a non-bailable offence and also under a circumstance where they are pitched against hostile communities and family members who masquerade in the glory of protection of women. A stereotypical attitude of a particular sex shall not hold legitimate claims under the Constitution of India. The Petitioner humbly submits that the impugned laws make the government assume the role of protecting religious identities of the people and demonstrates intolerance towards the religious choices of the people. This, in itself is an attack on the secular fabric that holds Indian democracy together.

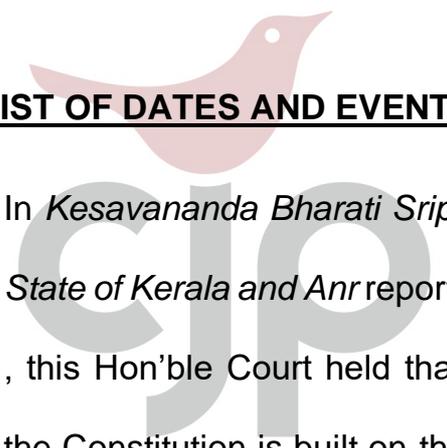
The Petitioner humbly submits that the proviso to section 3 of the impugned Act states that if “any person comes back to his ancestral religion, shall not be deemed conversion under this Act. Similarly section 3 of the impugned Ordinance states that “..Provided that if any person re-converts to his/her previous religion, the same shall be not deemed to be conversion under this Ordinance.” Both provisos, by leaving definitions of the terms “ancestral” or “immediate previous” religion are vague and broad leaving the possible interpretations to be based on subjective criteria.

India as a secular, democratic republic with the basic right of equality of citizenship does not in any way or fashion privilege any person of one faith over another. Implementation of this Act and Ordinance will imply all other religions being sought to converted into as products of force, fraud, coercion or seduction, in the present or in the past – hence illegitimate and deserving of annulment and punishment. B.R. Ambedkar's way of thinking about the evils of caste, community and gender discrimination, was evidenced in the Constitutional provisions and subsequent laws like the Special Marriages Act. During the time of colonial period, it is documented that Babasaheb Ambedkar was in direct contact with the women who were acutely suffering of his own community and seen the realities of caste discrimination in day-to-day life as an insider belonging to the caste of untouchable community. He had made attempts to erase the stratification among the castes by promoting inter caste and inter community marriages, secularising the society we live in. He actually prescribed inter-caste marriage as the real remedy for the abolition of caste and for India to move towards a caste-less, equality driven society. The virulent times of today, thus, necessitate inter-caste and inter-faith marriage. While the law needs to play an enabling role in facilitating them, the law alone is not sufficient, as the small percentage of such marriages clearly indicate. It is time society and family blessed these marriages unequivocally and heralded a change that this country critically needs. The laws which are anti-conversion are essentially crimes against the autonomy of women, dictating terms on potential suitors from within the woman's community, caging her constitutional freedoms. Criminalising of

every inter faith relationship awaiting the the State's blessings, and discouraging assertion of women voices is against the Constitutional vision that Babasaheb dreamt of.

The Petitioner humbly submits that both states, UP and Uttarakhand have had state level schemes to incentivise inter-religious marriages within their states. The scheme in undivided UP in 1976 provided an incentive of Rs. 10,000. In 2013, the same was increased to Rs 50,000. In 2017 however, the state of UP brought out a rule that if the interfaith couple converted after they got married, they would then lose the incentive. In the State of Uttarakhand the incentive of Rs 50,000 to inter-caste and inter-faith couples to encourage such alliances continue. There are however reports that, after resistance against such schemes by certain groups of people opposed to inter-caste and inter-religious marriages, the State of Uttarakhand is reportedly contemplating to end such monetary benefits given to inter faith unions. The Act and the Ordinance aims to take ten steps backward against the spirit of national unity and fraternity. It is clear that the Act and the Ordinance have eroded the scheme that was promoting a progressive society and one that would encourage a society that sees beyond a religious lens to imbibe and adopt principles of brotherhood, fraternity and secularism as embodied in the Constitution. There is a central law called the Special Marriage Act, 1954 that holds all marriages where ceremony has been performed, where neither party has at the time of registration more than one spouse living; where neither is an idiot or lunatic; where parties have completed 21 years of age and where parties are not within prohibited

degrees of relationship to be valid. This act makes no exception of cases where marriages can be declared null and void in case religious conversion takes place as is expressly stated in the Ordinance and the Act. The ordinance and the Act, both are repugnant to this central law to the extent that they declare those marriages void which are carried out for the sole purpose of conversion. Hence, the present Writ Petition is being filed by the Petitioner.



### LIST OF DATES AND EVENTS

24.04.1973 In *Kesavananda Bharati Sripadagalvaru and ors vs. State of Kerala and Anr* reported in 1973 (3) SCC 225 , this Hon'ble Court held that the basic structure of the Constitution is built on the basic foundation, i.e., the dignity and freedom of the individual and the duty of the State is not limited to the protection of individual interest but extends to acts for the achievement of the general welfare in all cases where it can safely act.

17.01.1977 In *Rev Stanislaus vs Madhya Pradesh* 1977 SCR (2) 611, this Hon'ble Court while upholding anti-conversion laws in some states held that subject to

public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

11.03.1994 In *Bommai v. Union of India*, (1994) 3 SCC 1, this Hon'ble Court held that while the citizens of this country are free to profess, practice and propagate such religion, faith or belief as they choose, so far as the state is concerned i.e., from the point of view of the State, the religion, faith or belief of a person is immaterial. To it, all are equal and all entitled to be treated equally. Any step inconsistent with constitutional policy is, in plain word, unconstitutional.

06.10.1998 Reports came out that the Gujarat police had set up special cells to 'investigate' inter-community marriages. The State's then Director General of Police, C.P. Singh had said in an interview with the Secretary of the petitioner that allegations of forced inter-religious marriages and conversions are entirely baseless in most cases.

15.04.2006 In an inquiry Report of the Deputy Police Commissioner, the Harbour Area Office, Mumbai it

came out that Babu Bajrangi (convicted as one of the core conspirator in massacre that took place at Naroda Patiya, Gujarat in 2002) ran a trust called Navchetan Trust that claimed to have saved 700 girls who run out of their home and marry outside their community. The report stated that Babu Bajrangi abducted girls by separating them out of marriages with other caste boys into his community.

07.07.2006 In *Lata Singh vs State of Uttar Pradesh and Ors*, (2006) 5 SCC 475, it was held that

*“This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. We sometimes hear of honour killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve harsh punishment.”*

05.09.2014 News article titled “The Muzaffarnagar Model” published by NDTV which explored how “Love Jihad” spectre also formed the bedrock for the build-up of to the full fledged communal riots in 2013 that ravaged the region of Muzaffarnagar, Uttar Pradesh resulting in 62 people dead and displacement of close to 50,000 persons.

16.12.2014 In *Smt Noor Jahan Begum @ Anjali Mishra and Anr vs. State of U.P. and ors.* W.P [C] No. 57068 of 2014, it was held that if a conversion is not inspired by religion feeling and under gone for its own sake, but is resorted merely with object of creating a ground for some claim of right or as a device adopted for the purpose to avoid marriage or to achieve an object without faith and belief in the unity of God (Allah) and Mohamed to be his prophet, the conversion shall not be bonafide.

29.01.2015 News Article titled “‘Love jihad’ in India and one man’s quest to prevent it” published by The Guardian giving true account of one such man in UP who claims to have coined the term ‘Love Jihad’

March 2017 “Anti-Romeo Squads” formed in UP Police comprising police, both men and women, in plain clothes and deployed at public places to check eve-teasing, indecent behaviour and passing of lewd comments at women and girls

05.01.2018 In *Soni Gerry vs Gerry Douglas*, (2018) 2 SCC 197 it was held that it needs no special emphasis to state

that attaining the age of majority in an individual's life has its own significance. She/he is entitled to make her/his choice.

08.03.2018 In *Shafia Jahan vs Ashokan K.M*, 2018 16 SCC 368, it was held that intimacies of marriage, including the choices which individuals make on whether or not to marry and on whom to marry, lie outside the control of the state. Interference by the State in such matters has a seriously chilling effect on the exercise of freedoms.

21.03.2018 Uttarakhand Freedom of Religion Act tabled in the State Assembly.

27.03.2018 In *Shakti Vahini vs Union of India and Ors*, (2018) 7 SCC 192, it was held by this Hon'ble Court that,

*“Assertion of choice is an inseparable facet of liberty and dignity. this right of enjoyment of liberty deserves to be continually and zealously guarded so that it can thrive with strength and flourish with splendence. The choice of an individual is an inextricable part of dignity, for dignity cannot be thought of where there is erosion of choice. If the right to express one's own choice is obstructed, it would be extremely difficult to think of dignity in its sanctified completeness.*

11.05.2018 Uttarakhand Freedom of Religion Act, 2018 received Governor's assent.

26.09.2018 In *KS Puttaswamy v Union of India*, reported in 2017 10 SCC 1 it was held that,

*"Privacy is the constitutional core of human dignity... Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Personal choices governing a way of life are intrinsic to privacy. The destruction by the State of a sanctified personal space whether of the body or of the mind is violative of the guarantee against arbitrary State action."*

28.09.2018 In *Indian Young Lawyers Association vs The State of Kerala*, (2019) 11 SCC, it was held that

*"While the Constitution recognises religious beliefs and faiths, its purpose is to ensure a wider acceptance of human dignity and liberty as the ultimate founding faith of the fundamental text of our governance. Where a conflict arises, the quest for human dignity, liberty and equality must prevail"*

23.09.2020 In *Priyanshi @ Km. Shamren and ors v. State of U.P and Anr* Writ C No. 14288 of 2020, the Hon'ble High Court of Allahabad followed the precedent laid down in *Noor Jahan Begum* (supra) and noted that the girl

was a Muslim by birth and she had converted to Hinduism, just a month before the marriage was solemnized. The court declined to interfere in the matter of providing police protection to the couple and said, In the aforesaid facts and circumstances, this Court is not inclined to interfere in the matter under Article 226 of Constitution of India.

31.10.2020 The Chief Minister of UP made the remarks while addressing a rally, *“We will also work to curb ‘love-jihad’, we’ll make a law. It is my warning to those who play with the honour and dignity of sisters and daughters by hiding their real names and identities, if they do not mend their ways, the Ram Naam Satya journey will start”*

11.11.2020 In *Salamat Ansari and Ors vs State of Uttar Pradesh and Ors* (Crl. Misc. Writ Petition No. 11367 of 2020), it was held by the Allahabad High Court that,

*“Right to live with a person of his/her choice irrespective of religion professed by them, is intrinsic to right to life and personal liberty. To disregard the choice of a person who is of the age of majority would not only be antithetic to the freedom of choice of a grown-up individual but would also be a threat to the concept of unity in diversity. An individual on attaining majority is statutorily conferred a right to choose a partner, which if denied would not only affect his/her human right but also his/her right to life and personal liberty, guaranteed under Article 21 of the Constitution of India. We do not see Priyanka*

*Kharwar and Salamat as Hindu and Muslim, rather as two grown up individuals who out of their own free will and choice are living together peacefully and happily over a year. We hold the judgments in Noor Jahan and Priyanshi as not laying good law.”*

23.11.2020 A report published by The Wire titled “Exclusive: UP Police Report Contradicts Adityanath Claim of ‘Rise in Love Jihad’” stated that Kanpur Inspector General of Police concluded that the majority of Hindu-Muslim romance cases probed were consensual. The SIT was formed after Hindutva activists met the Kanpur IGP to complain about incidents of ‘love jihad’.

24.11.2020 UP Government Promulgates Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020

28.11.2020 Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020 received Governor’s assent

02.12.2020 A news report by Times Now suggests that Uttar Pradesh Government may be considering withdrawing “The Intercaste and Interfaith Marriage Incentive Scheme” that was introduced in 1976 by the government at that time

04.12.2020 Uttar Pradesh Police intervened in a marriage ceremony between a 22-year-old Hindu Girl and 24-year-old Muslim boy that was about to take place in Lucknow

06.12.2020 A news report by The New Indian Express states that Uttarakhand is considering scrapping ‘The Intercaste and Interfaith Marriage Incentive Scheme’ that was introduced in 1976 by the government at that time, when it was part of state of Uttar Pradesh.

14.12.2020 Hence the present Writ Petition

**IN THE SUPREME COURT OF INDIA**  
**ORIGINAL CRIMINAL JURISDICTION**  
**WRIT PETITION (CRIMINAL) NO. \_\_\_\_ OF 2020**  
**[Under Article 32 of the Constitution of India**

**MEMO OF THE PARTIES**

**IN THE MATTER OF :**

Citizens for Justice and Peace  
Through Secretary  
Nirant, Juhu Tara Road,  
Mumbai

... PETITIONER

1. State of Uttar Pradesh  
Through Chief Secretary  
Government of Uttar Pradesh  
Room No. 10, Lok Bhawan,  
U.P. Civil Secretariat  
Vidhansabha Marg  
Lucknow, Uttar Pradesh – 226 001

...RESPONDENT NO.1

2. State of Uttarakhand  
Through Chief Secretary  
Uttarakhand Secretariat  
Subhash Road, Irrigation Colony  
Karanpur, Dehradun, Uttarakhand

...RESPONDENT NO.2

**WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA FOR  
ISSUANCE OF WRIT IN THE NATURE OF CERTIORARI OR ANY OTHER  
APPROPRIATE WRIT**

To,

The Hon'ble The Chief Justice of India And

His Lordship's Companion Justice of the Supreme Court of India



The Humble Petition of

The Petitioner above named

**MOST RESPECTFULLY SHOWETH:**

1. The present Public Interest Litigation is being filed under Article 32 of the Constitution of India to seek issuance of an appropriate writ for quashing the Uttarakhand Freedom of Religion Act, 2018 **(The Act)** and the passing of the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020 **(The Ordinance)** which are wholly in contravention with the law, the Constitution of India as well as the decisions of this Hon'ble Court.
- 1A. That the Petitioner herein is a registered organisation that has been working in the field of human rights for over 18 years. It is a human

rights movement dedicated to upholding and defending the freedom and constitutional rights of all Indians. The email address of the Petitioner Organization is – [cjpindia@gmail.com](mailto:cjpindia@gmail.com) and the phone number is 022-26602288. The PAN of the Petitioner Organization is AAATC4993J and annual income of the Petitioner was Rs. 99,74,326/- in the last financial year. In view of the urgency and paucity of time, the Petitioner was unable to make representation to the relevant authority. It is further submitted that there is no pending litigation of any nature involving the Petitioner which could have a legal nexus with the issues involved in the present Public Interest Litigation.

2. The Petitioner has been active in intervening in the courts and more particularly on aspects related to minority rights, forest rights, freedom of speech and expression, liberty, dignity, criminal justice reforms and child rights. It was founded in 2002 with the following objects:

To promote communal harmony in India.

- To promote friendship amongst people belonging to different religious communities.
- To combat all kinds of bigotry and intolerance which create inter-religious strife and differences among people.
- To promote values that will encourage the development of peace, justice and reconciliation, by all means, in every place, among all peoples of India and in every sphere of society.
- To build public opinion on the need for justice as an essential step towards reconciliation and peace.

- To check threats to Indian democracy and the Rule of Law, whether by governments or political parties or other organisations, groups or individuals.
- To make legal interventions in the Courts of Law through Public Interest Petitions or otherwise, to prosecute all those guilty of killing or maiming innocent citizens; and to assist others petitioning before the Courts for the redressal of grievances.
- To set up or assist in setting up any lawyer/team of lawyers to effectively intervene in government appointed commissions of inquiry probing the causes of communal conflict or to identify the role of different agencies in prevention or promotion of violence.
- To promote rationalism and tolerance and to promote religious and social reform including in particular reforms to improve the conditions of women and disadvantaged groups.

3. That apart from important matters and cases related to the Rights of Victims of Targeted Crimes, the Petitioner has been active in the area of implementation of the Forest Rights Act, 2006, and on the issue of Citizenship vis a vis inclusion and exclusion of genuine Indian citizens in the National Registrar of Citizens in the State of Assam.

#### **4. FACTS OF THE CASE**

The brief facts giving rise to the present petition are as follows:

4.1 The Uttarakhand Freedom of Religion Act, 2018 (**hereinafter referred to as “the Act” for sake of brevity**) received the assent of the Governor on

11.05.2018 after being tabled in the State Assembly on 21.03.2018 . It is an Act “to provide freedom of religion by prohibition of conversion from one religion to another by misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means or by marriage and for the matters incidental thereto”. The true and correct copy of the Act titled Uttarakhand Freedom of Religion Act, 2018 is marked and annexed hereto as **ANNEXURE P-1 (Page No. \_\_\_ to \_\_\_)**

4.2 The Section 3 of the Act prohibits conversion or attempt to convert another person by use of misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means or by marriage and does not considers reconversion back to ancestral religion as “conversion” under the definition of the Act. The proviso to section 3 of the impugned Act states that if “any person comes back to his ancestral religion, shall not be deemed conversion under this Act. Similarly section 3 of the impugned Ordinance states that “..Provided that if any person re-converts to his/her previous religion, the same shall be not deemed to be conversion under this Ordinance.” Both provisos, by leaving definitions of the terms “ancestral” or “immediate previous” religion are vague and broad leaving the possible interpretations to be based on subjective criteria.

4.3 Section 5 of the Act assigns maximum imprisonment of 5 years and minimum imprisonment of 1 year for contravention of section 3 and if the conversion is towards a minor or woman or person belonging to Scheduled

Caste or Scheduled Tribe, the minimum imprisonment is 2 years and maximum imprisonment prescribed is 7 years.

4.4 Section 6 of the Act provides for declaration of a marriage that is done by the man of one religion with the woman of another religion either by converting himself before or after marriage or by converting the woman before or after marriage to be null and void; without specifying how the same will be determined.

4.5 Section 8 of the Act provides that any person who desires to convert his religion, shall give a declaration at least one month in advance, in the prescribed pro forma, to the District Magistrate or the Executive Magistrate specially authorised by District Magistrate that he wishes to convert his religion on his own and at his free consent and without any force, coercion, undue influence or allurement. It also requires the religious priest performing such conversion to give similar notice to the DM; after which the DM shall get an enquiry conducted through police, with regard to real intention, purpose and cause of that proposed religion conversion.

4.6 The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020 (**hereinafter referred to as “the Ordinance” for sake of brevity**) received the State Governor assent on 28.11.2020, four days after it was promulgated on 24.11.2020. The Ordinance prohibits “unlawful conversions” from one religion to another. It is an act to “to provide for prohibition of unlawful conversion from one religion to another by misrepresentation, force, undue influence, coercion, allurement or by any

other fraudulent means or by marriage and for the matters concerned therewith or incidental to. The true and correct copy of the Ordinance titled Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020 is marked and annexed hereto as **ANNEXURE P-2** (Page No. \_\_\_ to \_\_\_)

4.7 Section 3 of the Ordinance provides that no person shall convert or attempt to convert either directly or otherwise any other person from one religion to another by use or practice of misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means or by marriage nor shall any person abet, convince or conspire such conversion provided that if any person reconverts to his/her immediate previous religion, the same shall not deemed to be a conversion under this Ordinance.

4.8 Section 5 of the Ordinance provides that a person found guilty of offence under Section 3 will be punishable with imprisonment from 1 to 5 years and fine of upto rupees fifteen thousand and contravention of Section 3 with respect to a minor, woman or a person belonging to Scheduled Caste or Scheduled Tribe shall attract a punishment of imprisonment between 2 to 10 years and shall also be liable to fine of upto rupees twenty-five thousand. Any person previously convicted under section 3, if found guilty for a second time, will be punishable with imprisonment for a term that shall not be less than 3 years but may extend to 10 years and shall also be liable to pay fine which shall not be less than rupees fifty thousand.

4.9 Section 6 states that any marriage which was done for the sole purpose of unlawful conversion or vice-versa by the man of one religion with the woman of another religion, either by converting himself/herself before or after marriage or by converting the woman before or after marriage, shall be declared void by the family court or where the family court is not established, by the court having jurisdiction to try such case on a petition presented by either party thereto against the other party of the marriage.

4.10 Section 8 provides that one who desires to convert his or her religion should give a declaration in the form prescribed in Schedule I at least sixty days in advance to the District Magistrate or the Additional District Magistrate specially authorized by District Magistrate, that he wishes to convert his/her religion on his/her own and with his or her free consent without any force, coercion, undue influence or allurement. It also requires the Religious Convertor who is slated to perform the conversion ceremony to give a one month's advance notice in the form prescribed in Schedule II of such conversion to the District Magistrate or the Additional District Magistrate. This will be followed by a police inquiry to ascertain the real intention, purpose, and cause of the proposed religious conversion.

4.11 Section 9 mandates that a converted person should send a declaration in the form prescribed in Schedule III within 60 days of the date of conversion to the District Magistrate of the district within which the person ordinarily resides. The declaration should contain all requisite details including permanent address, place of residence, the religion to which the person

originally belonged and the religion to which the person has converted. Thereafter, the converted individual should then appear before the District Magistrate within 21 days from the date of sending of declaration to confirm the contents of the declaration.

5. That at this stage the Petitioner is making submissions on certain aspects of the Ordinance and the Act which are critical and need to be addressed and necessary directions be issued. The Petitioner reserves the right to make additional submissions during the course of the hearing of the Petition.

**These grounds are:**

- I. Right to Personal Liberty and Autonomy
- II. Right to Freedom of Choice of Adults
- III. Right to Privacy
- IV. Right to Conscience
- V. Right against Discrimination
- VI. Constitutional Obligations and Powers of Governors
- VII. Secularism
- VIII. Bhimrao Ramji Ambedkar's ideology
- IX. State incentives for inter-faith marriages
- X. Law Commission Reports
- XI. International Law

## XII. Evolution of Rights in Constitutional Courts and Interpretation of Law and Legislation

### I. Right to Personal Liberty and Autonomy

6. That Article 21 of the Constitution of India reads, “No person shall be deprived of his life or personal liberty except according to procedure established by law.” This is one of the most progressive and liberating provisions enshrined in the Constitution. The provisions of the Ordinance empower the State to throttle an individual’s personal liberty. Section 8 of the Act and sections 8 and 9 of the Ordinance lays down the procedure to be followed by people who wish to convert from one religion to the other, not restricting to only inter faith marriages.

7. That section 8 of the Act provides that if any person who wants to convert contravenes section 8 of the Act shall be punished with imprisonment for a term which shall not be less than three months, but may extend to one year and shall also be liable to fine. A religious priest who contravenes section 8 of the Act shall be punished with imprisonment for a term which shall not be less than six months, but may extend to two years and shall also be liable to fine.

8. That section 8 of the Ordinance provides that a person undergoing religious conversion who violates Section 8 shall be punished with

imprisonment between 6 months and 3 years and fine which is not below Rs. 10,000/-. A religious converter who violates Section 8 of the Ordinance shall be punished with imprisonment between 1 to and 5 years and fine which is not less than Rs. 25,000/-. Further, contravention of provisions of Section 9 of the Ordinance will render the conversion 'illegal and void'.

9. That point 4 of the Statement of Object and Reasons of the Act (Uttarakhand) states that, "We have come across incidents in which with an agenda to increase strength of their own religion by getting people from other religions converted to their own religion, people do marry girls of other religion by misrepresentation of their own religion and after getting marriage to such girls, they get them converted to their own religion. Several instances came to notice that people convert themselves to the other religion only for the purpose of marriage with the girl of that -religion and after marriage they got that girl converted into their own religion. This Hon'ble Court also took judicial notice of such instances in the cases of SLP (Crl.) No.5777 of 2017 *Shafia Jahan v. Asokan K.M. & Ors.* and Writ Petition (Crl.) No.142 of 2016 *Aman Beg v. State of Madhya Pradesh & Ors.*"

10. That the impugned Act or the Ordinance does not mention conversion from one particular religion to another religion, by naming a religion. Though this makes it appear to be a broad Act and Ordinance that encompasses all religions under its umbrella and prohibits a person from converting to any religion, the Statement of Objects & Reasons (SOR) appears clearly to single

out only one kind of conversion. The above mentioned cases of Shafin Jahan (supra) and Aman Beg v State of Madhya Pradesh Writ Petition (Crl.) No. 142 of 2016, relied itself upon by the Act in its Objects and Reasons singles out only one kind of conversion by singularly vilifying one community as conspiring to convert young girls and by implication Islam as a religion who's co-religionists, "*increase strength of their own religion by getting people from other religions converted to their own religion, people do marry girls of other religion by misrepresentation of their own religion*". Both the cases relied upon by the Act in its Objects and Reasons focus on matters of conversion to Islam and that the accused in both the cases belong to the Muslim community. It seems to be in extension of this Objective that the term "Love Jihad" needs to be explored and elaborated. In fact the precedent relied upon by the Act, *Shafin Jahan vs Ashokan K.M* (2018 16 SCC 368), wherein in fact the Hon'ble Kerala High Court had flagged "concerns on Love Jihad/Jehad" and saw the entry of this vague terms into Indian jurisprudence, this Hon'ble Court, adjudicating the matter in fact, *upheld* the principles of pluralism and diversity in the society and perceives excessive state intervention to be damaging to an individual's liberty and autonomy. It was held,

*"86. The right to marry a person of one's choice is integral to Article 21 of the Constitution. The Constitution guarantees the right to life. This right cannot be taken away except through a law which is substantively and procedurally fair, just and reasonable. Intrinsic to the liberty which the Constitution guarantees as a fundamental right is the ability of each individual to take decisions on matters central to the pursuit of happiness. Matters of belief and faith, including whether to believe are at the core of constitutional liberty. The Constitution exists for believers as well as for agnostics. The Constitution protects the*

*ability of each individual to pursue a way of life or faith to which she or he seeks to adhere. Matters of dress and of food, of ideas and ideologies, of love and partnership are within the central aspects of identity. The law may regulate (subject to constitutional compliance) the conditions of a valid marriage, as it may regulate the situations in which a marital tie can be ended or annulled. These remedies are available to parties to a marriage for it is they who decide best on whether they should accept each other into a marital tie or continue in that relationship. Society has no role to play in determining our choice of partners.”*

11. That such encroaching and scrutinising powers of the State in an individual’s intimate choice to convert on his/her own volition is a grave assault on an individual’s personal liberty. That this Hon’ble Court in *Shafin Jahan vs Asokan K.M.* (2018) 16 SCC 368, emphasised on the ill effects of State intervention in such matters as under:

*“23. The superior courts, when they exercise their jurisdiction parens patriae do so in the case of persons who are incapable of asserting a free will such as minors or persons of unsound mind. The exercise of that jurisdiction should not transgress into the area of determining the suitability of partners to a marital tie. That decision rests exclusively with the individuals themselves. Neither the state nor society can intrude into that domain. The strength of our Constitution lies in its acceptance of the plurality and diversity of our culture. Intimacies of marriage, including the choices which individuals make on whether or not to marry and on whom to marry, lie outside the control of the state. Courts as upholders of constitutional freedoms must safeguard these freedoms. The cohesion and stability of our society depend on our syncretic culture. The Constitution protects it. Courts are duty bound not to swerve from the path of upholding our pluralism and diversity as a nation.”*

*“Interference by the State in such matters has a seriously chilling effect on the exercise of freedoms. Others are dissuaded to exercise their liberties for fear of the reprisals which may result upon the free exercise of choice. The chilling effect on others has a pernicious tendency to prevent them from asserting their liberty. Public spectacles involving a harsh exercise of State power prevent the exercise of freedom, by others in the same milieu. Nothing can be as destructive of freedom and liberty. Fear silences freedom.”*

12. That, in fact, it was the *Shafin Jahan (supra)* case that had become, in Indian public and political discourse, a strong case for supremacist and extreme right-wing organizations to pitch the narrative of “love jihad”. It was after the Kerala High Court judgment that the “Love Jihad” narrative gained strength despite the subsequent strong judgement of this Hon’ble Court. The systematic campaign against inter-faith marriages presumed as “forced conversions” for the purpose of marriage and baseless rhetoric started gaining strength (and circulated widely over social media through WhatsApp forwards) that Muslim youths were paid sums for marrying Hindu women and converting them. An article by “The Guardian” gave a true account of one such man in UP who claims to have coined the term ‘Love Jihad’. The man, Vijaykant Chauhan had shown the reporter a WhatsApp forward that was a pamphlet declaring cash rewards for converting Hindu women. A true and correct copy of the article titled “‘Love jihad’ in India and one man’s quest to prevent it” dated 29.01.2015 published by The Guardian is marked and annexed hereto as **ANNEXURE P-3 (Page No \_\_\_ to \_\_\_)**

13. That the concept of Love Jihad is an illusory construct based on rhetoric to promote divisiveness in society, generate permanent suspicious attitudes towards Islam and the Muslim community and create enmity between communities and breach harmony. “Love Jihad” is not a notion that has developed over night and that it has been the constant effort of the sectarian Government to place extra constitutional trust at the hands of the Police. The idea developed from setting up, within the echelons of the state police certain cells to “investigate cases of inter-community and inter-caste marriages.”

Among the first instances of such instances of moral policing were in the period between 1998-1990 in Gujarat and thereafter we have seen that this has manifest in Maharashtra, Chhatisgarh, Karnataka, Kerala, UP, West Bengal among others. The Gujarat police set up the special cells to 'investigate' inter-community marriages and was an act of the state that is directly violative of the fundamental rights of equality before the law, Right to Life with Dignity and Right to Freedom of Faith. This was followed by massive resistance and disenchantment of people and a spate of writ petitions were even filed by couples who had voluntarily entered into marriage before the Hon'ble Gujarat High Court. The secretary of the petitioner organisation had then interviewed Gujarat's Director General of Police, C.P. Singh in Ahmedabad, telephonically from Mumbai on October 6, 1998 wherein he claimed that allegations of forced inter-religious marriages and conversions are entirely baseless in most cases. When he was asked about who was responsible for the disturbing spate of attacks on minorities — Christians and Muslims — in Gujarat since February, 1998 he said, "*It is individuals not organisations that can be arrested and nailed. But one thing was clear in the pattern of incidents. It was reportedly the activists of the Vishwa Hindu Parishad and Bajrang Dal activists who were taking law into their own hands which posed a serious danger to peace in Gujarat. Many of the attacks on the minorities were after these organisations had whipped up local passions on mere allegations of conversions (by Christian missionaries) and allegedly forced inter-religious marriages, where again conversion was supposed to be the alleged motive.*" In the course of the interview, he informed the

Petitioner further that investigations revealed that in most cases these were entirely baseless allegations. A lot of hue and cry was raised even then about “forced marriages” but most of the incidents highlighted by them through the media were found incorrect. The then DGP, Gujarat even cited an example of the incidents at Randhikpur town in Panchmahal district (1998) where two women were allegedly kidnapped by Muslim youths and terror unleashed on Muslims of the village by the VHP and Bajrang Dal workers. Investigations revealed that the women had voluntarily left their families with these youths of their own volition and one of them had already married her boy-friend. A true and correct copy of the interview titled “Allegations of forced inter-religious marriages and conversions are entirely baseless in most cases” dated 06.10.1998 published by *Communalism Combat* is marked and annexed hereto as **ANNEXURE P-4 (Page No \_\_\_ to \_\_\_)**.

14. That even more recently, now, on or around the Ordinance being promulgated, , this allegation of women being forcefully lured into marriage proposals by a certain community of people are contradictory to what the Uttar Pradesh Police has stated. The official report – submitted to Kanpur inspector general of police has concluded that the majority of Hindu-Muslim romance cases probed were consensual. The SIT’s report, concluded that in eight of the 14 cases, the Hindu women had either married Muslim men or been with them of their own free will. In six cases, the FIRs registered are still being investigated, though in one of those cases the accused Muslim man has been released on bail. The SIT was formed after certain activists met the Kanpur IGP to complain about incidents of ‘love jihad’. These groups

got into the act after reports of a Kanpur woman, marrying a Muslim man emerged. Though she denied the claim that she had been forced to convert to Islam and even recorded a video to make this clear, her mother claimed she had said so under “pressure” and the UP government decided to order a probe. Such Act and Ordinance in place will further create divisions in the society to the prejudice and discrimination against the minorities who are bound to suffer and also impact the socio-economic development of the country. Apart from violating the Basic Structure Doctrine and violating basic and fundamental freedoms of Right to Equality, Right to Non-discrimination, Right to Equal Treatment by the State, both the Act and Ordinance seriously harm India’s standing as the World’s Largest Democracy in the International Community and the World Order and the Comity of Nations. A true and correct copy of the article titled “Exclusive: UP Police Report Contradicts Adityanath Claim of ‘Rise in Love Jihad’” dated 23.11.2020 published by The Wire is marked and annexed hereto as **ANNEXURE P-5** (Page No.\_\_\_\_\_ to \_\_\_\_\_)

15. That in his opinion piece, former IPS Officer NC Asthana has pointed out how the vague language of the ordinance is a breeding ground for misuse. Both the ordinance and the Act make “convincing for conversion” a criminal act. “While abetment and conspiracy are recognised in law, ‘convincing’ is not. This is pure fiction. Under this law, it could mean that if four Muslims happen to be discussing the merits of Islam at a teashop while a Hindu customer is also present and taking part in the conversation, they could be trying to ‘convince’ him to convert to Islam!,” reads the article. Further, he

also comments on the provision of the ordinance (a similar provision appears in the Act as well) which puts the burden of proof that the conversion was 'lawful' lies on the person who has 'caused' the conversion. "They do not bother to ask the person who has converted – his or her opinion does not matter at all. The government seems to be more interested in prosecuting and harassing the 'convertor'. For the sake of argument, even if it is granted that the government is keen on prohibiting forcible conversions, all that it needs is that the converted person be asked to depose before a judicial magistrate within a certain period of conversion and submit the statement to the government," he notes. A true and correct copy of the article titled "Legal Howlers in UP's 'Anti-Conversion' Law Expose its Real Intent" dated 07.12.2020 published by The Wire is marked and annexed hereto as **ANNEXURE P-6** (Page No. \_\_\_ to \_\_\_)

16. That similar cells/groups with names like the nomenclature "Anti-Romeo Squads" were also formed in different states ostensibly to "protect" the honour of women. That these developments with the echelons of the police in effect arms the law and order machinery with unconstitutional power, leads to non-state actors taking law into their own hands, often using violence, increase vigilance and patrol spaces occupied predominantly by the youth under the garb of protecting women from 'vicious' men who could corrupt them. These are nothing short of attempts to encroach on the privacy and freedom of individual citizens "protect women from stalkers and eve-teasers". Reportedly these often comprise of police, both men and women, in plain clothes and deployed at public places like schools, colleges, shopping malls,

markets, parks, cinema halls and bus stands to prevent young couples from occupying public spaces and parks. The squads have been provided with ward-robe mounted cameras to ensure no one slips from police net. Though a much-publicised initiative for bringing about greater security for women, the squads are not backed by any legislation and in fact amount to vesting law enforcement authorities with extra-constitutional powers not suited to a democracy and more to a police state. Even with the operation of such squads to keep a check on instances of abuse against women, the latest National Crime Record Bureau data suggested that Uttar Pradesh reported the highest number of crime against women.

To cite some examples, such instances of giving excessive administrative power in the hands of the State has always had catastrophic impacts on the personal space individuals have a right to enjoy.

16.1 That the Mumbai (Malwani) Police, in 2015, raided hotels in Madh and Marve and detained around 13 couples on August 6 for alleged indecent behaviour after knocking on hotel rooms and carting them away to Malvani police station. The raids were reportedly carried out following an “unverified” tip that “prostitution-like activities” were happening there. Consenting adults who checked into several hotels in Madh Island and Aksa area were harassed and humiliated by the Police. Later, the Joint Commissioner of Police (law and order) accepted that overzealous Police officers made a mistake by breaching their privacy. The true and correct copy of the article

titled “Hotel raids: Made a mistake, cops were overzealous, admit Mumbai Police” dated 11.08.2015 published by The Indian Express is marked and annexed hereto as **ANNEXURE P-7. (Page No. \_\_\_\_ to \_\_\_\_)**

16.2 That in Chhattisgarh, similar groups in 2016, forced a couple to exchange garlands in a public place when they were seen roaming with each other on the streets. The outfit, in the name of moral policing, had also announced that couples who are seen loitering around “romancing” in the streets will be either forced to tie Rakhi or garland each other in a public place. Public thrashing and forcibly solemnising marriages is imposed on young men and women since they have been influenced by the sinful Western culture. The true and correct copy of the article titled “Shiv Sena goons force couple to garland each other on Valentine’s day in Chhattisgarh” dated 15.01.2016 published by Times of India is marked and annexed hereto as **ANNEXURE P-8 . (Page No. \_\_\_\_ to \_\_\_\_)**

16.3 That in a tragic incident, a 23-year-old young man and a victim of moral policing was forced to end his life in Kerala when he was allegedly harassed and filmed for indulging in immoral behaviour. He and his woman friend were insulted and targeted by moral vigilantes near a beach in Kollam on February 14, 2017 and that he left a suicide note citing harassment. The true and correct copy of the article titled “Kerala Man, Filmed On Valentine's Day, Found Hanging” dated 24.02.2017 published by New Delhi Television is marked and annexed hereto as **ANNEXURE P-9 . (Page No. \_\_\_\_ to \_\_\_\_)**

16.4 That a young couple in Kolkata were beaten up and forced out of a packed Kolkata metro Railway coach for hugging. Fellow commuters were allowed to pass comments like the couple was “polluting the atmosphere” suggesting that they should go to a pub in Park Street instead. The true and correct copy of the article titled “Couple beaten up for hugging in Kolkata's Dum Dum metro station” dated 01.05.2018 published by The New Indian Express is marked and annexed hereto as **Annexure P-10** (Page No. \_\_\_ to \_\_\_)

16.5. That a 39 year old man, Haider Ali was allegedly beaten up and tortured at the Kasya Police station after the Police stopped a wedding ceremony following a phone call claiming that a Muslim man was marrying a Hindu woman after converting here. In fact it was a case of same faith marriage. The incident like so many others reveals what can happen when the police are given extra-Constitutional powers. The true and correct copy of the article titled “ Love Jihad rumour: Wedding stopped in UP, Muslim couple kept overnight in police station” dated 11.12.2020 published in The Indian Express is marked and annexed hereto as **Annexure P-11.** (Page No. \_\_ to \_\_)

17. That in several states of the country due to these developments that have in effect, over a period of time given extra-Constitutional powers to the police and non-state actors, the result has been that adult couples who broke caste and community barriers and used the Constitutional vision encompassed in

the Special Marriages Act of 1954 to marry and co-habit, have often been targeted.

18. Among one such example, documented and investigated by authorities is that of one run by Babu Bajrangi and his Navchetan Sanstha, who in the name of social justice, has violated fundamental rights of the aggrieved people and created upheaval in the lives of innocent people. The police report prepared by Deputy Commissioner, Harbour Area Office, Mumbai in 2006 submitted before the Police Commissioner noted that this Babu Bajrangi abducted girls by separating them out of marriages with other caste boys into his community. A true and correct copy of the inquiry report on Mumbai High Court Writ Petition No. 30713072/3073, 3074/2005 prepared by the Deputy Police Commissioner, the Harbour Area Office, Mumbai (O.W.No.059/DY.TC/BP/V/06) dated 15.04.2006 is marked and annexed hereto as **ANNEXURE P-12 (Page No \_\_\_ to \_\_\_)**.

19. That this Love Jihad spectre also formed the bedrock for the build-up of to the full fledged communal riots in 2013 that ravaged the region of Muzaffarnagar, Uttar Pradesh resulting in 62 people dead and displacement of close to 50,000 innocent persons. Among the dead were persons belonging to both the Hindu and Muslim community. Several provocative slogans and around the issue of purportedly coercive conversions followed by marriage were used to justify communal violence that spread at the time to four districts in western Uttar Pradesh. The word Jihad in the Holy Quran,

means striving and struggle in the way of God, and that now because of such planned narratives being spun through social media has projected 'Jihad' as mindless killing of non-Muslims. The word Love Jihad has come to be used to further demonize the Muslim community and the propaganda has been that some Muslim organizations are funding Muslim youth, to lure the non-Muslim girls, to marry them and to increase the Muslim population. A true and correct copy of an article titled "The Muzaffarnagar Model" dated 05.09.2014 published by NDTV is marked and annexed hereto as **ANNEXURE P-13 (Page No \_\_\_ to \_\_\_).**

20. That section 4 of the Act (Uttarakhand) states that any aggrieved person or his parents or brother-sister may complain to the Court of such conversion of religion on the ground that it would contravene of the conditions specified in section 3 of the Act that prohibits conversion from one religion to another religion by misrepresentation, force, fraud, undue influence, coercion, allurements or marriage; Section 4 of the Ordinance (Uttar Pradesh) provides who can register an FIR against an alleged accused in cases of forced conversions. As per Section 4, any aggrieved person, his/her parents, brother, sister, or any other person who is related to him/her by blood, marriage, or adoption may lodge an FIR of such conversion which contravenes the provisions of Section 3 (that stipulates what is prohibited). It is a known fact that inter faith couples have often faced harassment, torture, social ostracism at the hands of the merciless society, family members and in many instances' death, popularly known as 'Honour Killing.' These sections give arbitrary powers to people to bring in frivolous and false

complaints implicating innocent people into an offence that is a cognisable and non bailable offence under section 7 of the Ordinance. On one FIR registration, Police officials can arrest an alleged accused without a warrant and may or may not be released on bail. Such provisions will act as a legal cover and incentive for further honour crimes against men and women of Uttarakhand and Uttar Pradesh.

21. That this Hon'ble Court had taken a strict view against Honour Killings in *Lata Singh vs State of Uttar Pradesh and Ors*, (2006) 5 SCC 475, as under:

1. *"This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum, they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, and any one who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law."* (Emphasis provided)
2. *"We sometimes hear of 'honour' killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism."*

## **II. Right to Freedom of Choice of Adults**

22. That the Ordinance (Uttar Pradesh) is premised on conspiracy theories and assumes that all conversions are illegally forced upon individuals who

may have attained the age of majority. If the conversion is not forced, a rigmarole of procedures have to be followed before and after conversion, taking the State into confidence that it was an informed and voluntary decision by the individual. It places a burden on individuals to justify the personal decisions taken by them for State approval and that is constitutionally repugnant and against a citizen's right to freely exercise his/her freedom of choice.

23. That in ***Soni Gerry vs Gerry Douglas***, reported in (2018) 2 SCC 197, this Hon'ble Court has upheld the rights of adult citizens who are capable of making their own choices as under:

*"It needs no special emphasis to state that attaining the age of majority in an individual's life has its own significance. She/he is entitled to make her/his choice. The Courts cannot, as long as the choice remains, assume the role of parens patriae. The daughter is entitled to enjoy her freedom as the law permits and the Court should not assume the role of a super guardian being moved by any kind of sentiment of the mother or the egotism of the father. We say so without any reservation."*

24. That the absolute liberty and freedom to choose is intrinsic to human existence. An individual, through this Ordinance, has to go through a cumbersome process and subject himself/herself to a District Magistrate and Police inquiry to exercise his/her independence. In ***Shakti Vahini vs Union of India and Ors***, (2018) 7 SCC 192, this Hon'ble Court had said:

*"Assertion of choice is an insegregable facet of liberty and dignity. That is why the French philosopher and thinker, Simone Weil, has said: Liberty, taking the word in its concrete sense consists in the ability to choose." When the ability to choose is crushed in the name of class honour and the person's physical frame is treated with absolute indignity, a chilling effect dominates over the brains and bones of the society at large. The question that poignantly emanates for*

*consideration is whether the elders of the family or clan can ever be allowed to proclaim a verdict guided by some notion of passion and eliminate the life of the young who have exercised their choice to get married against the wishes of their elders or contrary to the customary practice of the clan. The answer has to be an emphatic 'No'. It is because the sea of liberty and the ingrained sense of dignity do not countenance such treatment inasmuch as the pattern of behaviour is based on some extra-constitutional perception. Class honour, howsoever perceived, cannot smother the choice of an individual which he or she is entitled to enjoy under our compassionate Constitution. And this right of enjoyment of liberty deserves to be continually and zealously guarded so that it can thrive with strength and flourish with resplendence. It is also necessary to state here that the old order has to give way to the new. Feudal perception has to melt into oblivion paving the smooth path for liberty."*

25. That this Hon'ble court has further emphasised in the case of *Shakti Vahini*, the true meaning of the choice of an individual which is inextricably linked with his/her own dignity as under:

*"The choice of an individual is an inextricable part of dignity, for dignity cannot be thought of where there is erosion of choice. True it is, the same is bound by the principle of constitutional limitation but in the absence of such limitation, none, we mean, no one shall be permitted to interfere in the fructification of the said choice. If the right to express one's own choice is obstructed, it would be extremely difficult to think of dignity in its sanctified completeness. When two adults marry out of their volition, they choose their path; they consummate their relationship; they feel that it is their goal and they have the right to do so. And it can unequivocally be stated that they have the right and any infringement of the said right is a constitutional violation. The majority in the name of class or elevated honour of clan cannot call for their presence or force their appearance as if they are the monarchs of some indescribable era who have the power, authority and final say to impose any sentence and determine the execution of the same in the way they desire possibly harbouring the notion that they are a law unto themselves or they are the ancestors of Caesar or, for that matter, Louis the XIV. The Constitution and the laws of this country do not countenance such an act and, in fact, the whole activity is illegal and punishable as offence under the criminal law."*

26. That the Ordinance stands in the way and disregards the choice of individuals who have the full freedom to decide the course of their life, to

choose a particular faith or marry a person from a particular faith or adopt the moral and ethical beliefs of a faith for personal reasons without mandatory State policing.

27. That this Hon'ble Court in *Lata Singh* (supra) has upheld an (adult) individual's choice to marry whoever he/she wants even if it is inter-caste or inter-religious marriage and further directs the police authorities to protect such inter-faith or inter-caste couples from being harassed by anyone and to institute criminal proceedings against such person(s). It appears that the impugned Ordinance and Act are contravening the precedent set and the directions issued by this Hon'ble Court by initiating criminal proceedings in cases of inter-religious marriages and prohibiting conversion by way of marriage.

28. An individual's freedom of choice includes an individuals' right to exercise his rights enshrined in the Constitution. The provisions of the impugned Ordinance and Act impinge upon an individual's right to freedom of choice, right to life and liberty as well as right to freedom of religion. The impugned Ordinance and Act completely disregard an individual's freedom of choice and assume the doctrine of *parens patriae* by assuming that all religious conversions are somehow brought about by influence or coercion and criminalising conversion by reason of marriage. This can be inferred from plain reading of the ordinance and the Act since neither provide exceptions for voluntary conversions, rather impose unreasonable restrictions on a

person's choice to convert by making a secular state a party to such personal choice, such as marriage and professing a religion.

29. In *Kesavananda Bharati and ors vs. State of Kerala and Anr* (1973 (3) SCC 225), while laying down the basic structure of the Constitution, this Hon'ble Court stated that the basic structure of the Constitution is built on the basic foundation, i.e., the dignity and freedom of the individual and the duty of the State is not limited to the protection of individual interest but extends to acts for the achievement of the general welfare in all cases where it can safely act.

### III. Right to Privacy

30. That Indian citizens enjoy the Right to Privacy as a fundamental right but the Act and the Ordinance (Uttarakhand and Uttar Pradesh) are unconstitutional as both attempt to govern the life of the residents of Uttarakhand and Uttar Pradesh and to not allow them to take charge of the significant decisions in their life. The Act and the Ordinance allows unnecessary intrusion in the lives of people who have their autonomy compromised by the State. This Hon'ble Court in *KS Puttaswamy v Union of India* (2017 10 SCC 1), had laid down that privacy is an important facet of human dignity and that choosing a life partner is a matter of privacy. The relevant portions of the judgment are quoted hereunder:

322. *"Privacy is the constitutional core of human dignity. Privacy has both a normative and descriptive function. At a normative level privacy subserves those eternal values upon which the guarantees of life, liberty and freedom are founded. At a descriptive level, privacy postulates a*

*bundle of entitlements and interests which lie at the foundation of ordered liberty.”*

*323. “Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy. Privacy protects heterogeneity and recognises the plurality and diversity of our culture. While the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arenas, it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person since it is an essential facet of the dignity of the human being.”*

31. That when the individuals have to approach the District Magistrate to validate their conversion for purpose of marriage or otherwise, it violates this very right to privacy and disempowers individuals. If the State needs to be satiated about a person’s individual and personal choice of who or who shall be the partner, this state of affairs is not just unconstitutional, it leaves their right to privacy severely handicapped. To involve the police to decipher the real intention, cause and purpose of the conversion forces an individual to reveal personal information about himself/herself further contravening the right to privacy in letter and spirit. That in essence, this Hon’ble Court had observed in *K.S Puttaswamy* that the right to be left alone is also fundamental to the right to privacy and to have to inform the State about family matters, violates the exercise of liberty. It further also holds that,

*42. “Privacy is a concomitant of the right of the individual to exercise control over his or her personality. It finds an origin in the notion that there are certain rights which are natural to or inherent in a human*

*being. Natural rights are inalienable because they are inseparable from the human personality.*

*46. "Natural rights are not bestowed by the State. They inhere in human beings because they are human. They exist equally in the individual irrespective of class or strata, gender or orientation."*

31.1 That the right to privacy is a natural inalienable right available to each and every citizen of the country and the disrespect of such rights renders human existence worthless and powerless. Involving the State in matters of following a path based on the tenets of a particular faith or religion that appeals to your conscience is an unreasonable interruption by the State. Privacy is an important condition precedent to the enjoyment of life. This Hon'ble Court held that:

*"In the Indian context, a fundamental right to privacy would cover at least the following three aspects:*

*521. Privacy that involves the person i.e. when there is some invasion by the State of a person's rights relatable to his physical body, such as the right to move freely; Informational privacy which does not deal with a person's body but deals with a person's mind, and therefore recognises that an individual may have control over the dissemination of material that is personal to him. Unauthorised use of such information may, therefore lead to infringement of this right; and the privacy of choice, which protects an individual's autonomy over fundamental personal choices."*

31.2 That dissemination of personal information to the State impinges on an individual's right to exercise control over his/her life and to live a life sans

mental pressures and take charge of fundamental personal choice of selecting a faith. That “Privacy is, therefore, necessary in both its mental and physical aspects as an enabler of guaranteed freedoms.” In K.S Puttaswamy (supra), the Hon’ble Court had also observed:

298. *“...The destruction by the State of a sanctified personal space whether of the body or of the mind is violative of the guarantee against arbitrary State action. Privacy of the body entitles an individual to the integrity of the physical aspects of personhood. The intersection between one’s mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and the freedom of self-determination.”*

#### **IV. Right to Conscience**

32. That Article 25 of the Constitution provides every individual the ‘freedom of conscience’ and free profession, practice and propagation of religion. The dictionary meaning of conscience states “a person’s moral sense of right and wrong, viewed as acting as a guide to one’s behaviour” and that a person’s moral sense of right and wrong can conform to a particular faith or not. This freedom of conscience would entail that one can be non-religious and exercise the right to conscience or be religious and exercise the same right.

33. That, the word ‘propagate’ was added to the Constitution after much debate on the desirability of such a clause; no less at the insistence of the Minorities Commission of the Constituent Assembly. The Constituent Assembly, in its debates on 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> December focused, amongst other things, on the desirability of the right to propagate. The decision to include the term within the scope of the right to religion was on the basis of the fact

that many religions, such as Christianity and Islam, are by nature proselytizing religions, and for that end, the right to propagate their faith was an essential feature of the religion. As a necessary corollary of the group right of a religion to propagate, an individual must have the right to convert to any religion other than his own. Hence, the right to convert oneself to another religion is manifested in Article 25 of the Constitution.

33.1 That it may be relevant to mention here a reference to the Constituent Assembly debates with relation to Article 25. The Petitioner submits that, In fact during the Constitutional Assembly debates there were contested arguments along with an amendment being moved to drop the word propagate from the Article. However, a large number of members supported the inclusion of this word. In the words of

T.T. Krishnamachari, he said:

*“It does not mean that the right to propagate ones religion is given to any particular community or people who follow any particular religion. It is precisely open to the Hindus and the Arya Samajists to carry out their Suddhi propaganda as it is open to the Christians, the Muslims, the Jains, the Buddhists and to every other religionist so long as he does it subject to public order, morality and other conditions that have to be observed in any civilised Government. So it is not a question of taking away anybody’s rights.”*

Pandit Laxmikant Maitra argued:

*“If we are to restore our sense of values which we have held dear, it is of the utmost importance that we should be able to propagate what we honestly feel and believe in. Propagation does not necessarily mean seeking converts by force of arms by the sword or by coercion. But why should obstacles stand in the way if by exposition, illustration or persuasion you could convey your own religious faith to others?”*

K.M. Munshi went further and said that even if the word propagate was removed the fundamental right of freedom of speech and expression would allow religious communities to persuade other people to join their faith. The word propagate was retained in Article 25 of the Constitution. The Petitioner craves leave to rely on the original contentions before the Constituent Assembly in the course of hearing of the Petition.

34. That it is true, this Hon'ble Court in *Rev Stanislaus vs Madhya Pradesh* 1977 SCR (2) 611, said that the fundamental right to "propagate" religion does not include the right to convert a person to another religion and upheld the anti-conversion statutes enacted by the states of Orissa and Madhya Pradesh, restraining the freedom of conscience and the right to propagate religion. But this freedom of conscience guaranteed under Article 25 will be rendered hollow if each isolated act of religious conversion is seen as forced and illegal unless proven otherwise by a complex process involving the State.

35. That in *Rev Stanislaus* (supra), this Hon'ble Court interpreted religious conversion from the prism of maintenance of public order as Article 25(1) of the Constitution of India states, "*Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.*" That this Hon'ble Court observed:

*"23. The Acts therefore clearly provide for the maintenance of public order for, if forcible conversion had not been prohibited, that would have created public disorder in the States.....Public order is an*

*expression of wide connotation and signifies state of tranquillity which prevails among the members of a political society as a result of internal regulations enforced by the Government which they have established.”*  
*“20. We have no doubt that it is in this sense. that the word ‘propagate’ has been used in Article 25 (1), for what the Article grants is not the right to convert another person to one’s own religion, but to transmit or spread one’s religion by an exposition of its tenets. It has to be remembered that Article 25 (1) guarantees “freedom of conscience” to every citizen, and not merely to the followers of one particular religion, and that, in turn, postulates that there is no fundamental right to convert another person to one’s own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the “freedom of conscience” guaranteed to all the citizens of the country alike.”*

36. That although this Hon’ble Court was clear to uphold every citizen’s freedom of conscience against forceful conversions, it also infringes a person’s individual autonomy. To frame a personal matter of bodily and mental autonomy as that of public order, would make the right to liberty and dignity redundant. That if there are communal elements that oppose conversion from one faith to the other, the responsibility and duty of the State is to impose restrictions on those opposing voices rather than attempting to determine the ‘correct intentions’ and validity of someone’s belief. The states of Uttarakhand and Uttar Pradesh derive power from this impugned Act and Ordinance to impose restrictions on religious conversion that may appeal to some individual’s conscience, is a blatant violation of the said fundamental right.

37. That the impugned Ordinance and Act undermine and violate an individual’s freedom of choice, conscience and religion. An individual may as well choose to convert to another religion as he/she may be willing whether

the reason is getting influenced on his/her own by reading scriptures or growing up in the community or out of love for another person and a desire to convert to the religion of the spouse cannot be curbed or curtailed by the government.

38. That not even two weeks have passed since the promulgation of the Ordinance and the Uttar Pradesh Police intervened in a marriage ceremony between a 22-year-old Hindu Girl and 24-year-old Muslim boy that was about to take place in Lucknow with the consent of the couple and the family members with no evidence of coercion. The police reached the marriage site just as the final preparations were on, and said that the couple needs the District Magistrate's permission before going ahead. That the couple shall have to wait for another two months (60 days) before tying the knot since that is the required prescribed under sections 8 and 9 of the said Ordinance. By the time this petition has been filed, the number of such arrests is on the increase and on a daily basis, cases are being registered under the new law. The petitioners crave leave to place these instances before this Hon'ble Court during the hearing of the Petition. A true and correct copy of the article titled "Police Stop Inter-Faith Marriage in Lucknow, Despite Couple and Families' Consent" dated 04.12.2020 published by The Wire is marked and annexed hereto as **ANNEXURE P-14 (Page No. \_\_\_ to \_\_\_)**

39. That even though a Five-Member Bench of this Hon'ble Court in Rev Stainislaus (supra) upheld the validity of anti-conversion laws, it did not explicitly bar a person to convert for the sake of marriage. Both the Act and

the Ordinance prohibit religious conversion by marriage and hence cannot rely upon the Stainislaus judgment as the same was silent on inter-faith marriages which cannot be related to public order, as enumerated under Article 25 of the Constitution. This Hon'ble Court's decision in Rev Stainislaus bears no effect on inter faith couples who intend to marry and convert from one religion to the other on their own volition for whatever the reason may be. Specifically emphasising on the point of conversion for marriage, both the Act and the Ordinance prohibit religious conversion by marriage. Hence one cannot rely upon the Stainislaus judgment as the same was silent on inter-faith marriages. The idea of a particular individual converting for the sake of marriage on his/her own will is a matter of Personal Choice, Autonomy, Privacy, Conscience –all basic and Fundamental Rights under Articles 14, 15,16, 19, 21 and 25 of the Constitution, and cannot be merely related to 'disruption of public order, as enumerated under Article 25 of the Constitution'. The nature and tone of this Hon'ble Court's decision in Rev Stainislaus, focused only on "forced" conversions and not on the practice of conversion undertaken by a sound mind who has attained the age of majority. Also, section 8 of both the Ordinance and the Act envisages procedures of prior notice and intimation that needs to be given to the District Magistrate before exercising their freedom of choice to follow a particular faith. The impugned sections assume an absence of exercise of rational choice, free will and autonomy and moreover are based on the assumptions that all conversions are forced and purposely imposed on an individual and hence requires strict state scrutiny. This pre-supposition itself is an assault

on the basic premises of the Indian Constitution with its Fundamentals of Equality and Non-Discrimination apart from militating against its vision of a pluralistic society comprising different faith, belief and value systems. Besides, such pre-suppositions could unnecessarily lead to sensationalization by Government officials in the society and also subject individuals to impinging inquiry by agents of law enforcement and the state into matters and issues relating to freedoms, personal choice and autonomy. The provision mandates an advance notice to be given to the District Magistrate before the intended conversion, which is to be followed by a police enquiry into the circumstances of conversion. These provisions have the potential to give state sanction and administrative support to the societal hostilities which persons intending to have inter-faith marriages face. That involving citizens in these procedures disables them from exercising the essential attributes of Constitutional freedoms in the fullest sense.

39.1 A concern that has often been raised with respect to the validity of the impugned Act and Ordinance is the decision of this Hon'ble Court decided in favour of the constitutional validity of the Orissa and Madhya Pradesh anti conversion legislations. The Petitioner would like to humbly state that

- (i) This Hon'ble Court while deliberating on legislative competence limited itself to examining Lists I and II and did not examine possible encroachments on List III;

(ii) Further, this Hon'ble Court did not examine all the aspects of the legislation including the violation of individuals right to privacy, autonomy, right to life, equal treatment and right to propagate, the effect on India's international obligations and secularism, unreasonableness or arbitrariness of the legislation; and,

39.2. The *Stainislaus* case examined the ambit of the constitutional protection of anti-conversion legislation. In that case, the Madhya Pradesh and the Orissa laws were challenged on the ground of violation of Art. 25. Both the legislations did not outlaw conversions per se, but targeted conversion by force, undue influence or inducement. The Acts had been challenged in the respective High Courts and the Orissa Act was struck down on the grounds of violation of Art. 25 and lack of legislative competence, whereas the Madhya Pradesh Act was upheld. In appeal before the Supreme Court, the legislations were upheld on the grounds that they were within the legislative competence of the state and not violative of Article 25. Thereafter other states like Gujarat and Tamil Nadu have passed similar laws that have not yet been appealed before this Hon'ble Court. Petitioners crave leave to elaborate these aspects further.

#### History of State Anti-Conversion Legislations

39.3 The Orissa Government passed rules under the state law in 1989, amended these in 1999; even these were challenged on grounds of unconstitutionality but were upheld by the High Court. In 1978, the state of

Arunachal Pradesh, in year 2000, state of Chhattisgarh, in the year 2002 state of Tamil Nadu, in the year 2003 state of Gujarat, in 2006 the state of Himachal Pradesh passed different versions of anti-conversion laws. The state of Rajasthan passed a similar law in 2006 but this is pending Presidential assent. The Gujarat's state anti-conversion law has been challenged in the Gujarat High Court where the matter is still pending. The legislative and judicial history of these may have some bearing on the matters herein which will be dealt with in detail by the Petitioner during the hearing of the Petition.

39.4 The crucial issue of agency, autonomy, freedom of choice, right to life, equality before the law and equal protection before the law of women, Dalits and Adivasis are all impacted here as is the right to privacy and the basic and fundamental structure of the Constitution.

39.5 The Petitioners would like to submit that while the initial laws required, at the highest, subsequent intimation of an act of conversion, over the decades and more so in the last 15 years the changes have been drastic.

(a) During the initial years, what was required was only subsequent intimation of conversion to the authorities, now not only is the intimation to authorities prior but there is also a requirement of prior permission and subsequent declaration with provision of public display of details and police enquiry. This by itself prevents people from exercising their freedom of conscience because of the fear of a purely

private matter becoming a public spectacle and threats and violence by public vigilante groups coupled with apprehension of arrest, etc.

- (b) The earlier laws did not penalise the person who gets converted and only the convertor was penalised- now even the person getting converted is penalised. This is a direct attack on the recognised fundamental right of freedom of conscience;
- (c) The earlier laws did not exempt those who reverted back to the earlier religion or religion of ancestors but now that is made an exception;
- (d) While earlier there was no change in burden of proof, now the laws shift the burden on the convertor and converted person to prove that the conversion was without any fraud, coercion, undue influence, allurement, etc.
- (e) While earlier it was never mentioned that the offences were non bailable, now it is routinely provided that the offences are non bailable;
- (f) Earlier the definition of allurement was quite narrow- though still suspect, now any benefit given to the convertor- material or spiritual is treated as allurement
- (g) In earlier laws, the punishment was relatively mild, while now not only is the punishment higher but also there is a provision for minimum imprisonment;
- (h) Earlier even violation of the law did not lead to any impact on the conversion, now even not giving intimation renders the conversion invalid.

- (i) Earlier, the laws did not directly deal with marriage but now they not only deal directly with marriage and conversion but also prohibit all conversions on marriage.

39.6 As has been demonstrated earlier, the decision of the Supreme Court in *Stainislaus* has no real application in the present scenario. The issue of legislative competence has been examined only in the context of the conflict with the residuary power of the Union under Entry 97, List I. The possible conflict of the present legislation with Union legislation under List III also has to be examined to determine legislative competence.

39.7 On the question of legislative competence, the court was then of the opinion that since any attempt at conversion was likely to result in a breach of public order affecting the community at large, the State legislatures would have the competence to enact legislation which is likely to avoid disturbances to the public order by prohibiting conversion from one religion to another in a manner reprehensible to the conscience of the community.

39.8 The impugned Act and Ordinance have certain aspects which go beyond the limits of public order and affect the administration of the criminal justice system in the country. Thus, they also affect Entry 1, List III which covers "*Criminal law, including all matters included in the Indian Penal Code at the commencement of the Constitution but excluding offences against laws in respect of any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union*

*in aid of the civil power.*” This field is already occupied by the Indian Penal Code which provides the substantial framework of criminal law in the country. The present laws place conversion and attempt to convert the same footing, and the punishment is the same for both of them. Thus under Section 3 read with Section 4, any attempt would be punishable by a term of two to five years.

39.9 The Indian Penal Code has a detailed scheme for the punishment of “attempts” which matches the punishment for attempt with the gravity of the offence. Thus, an equal quantum of punishment for offences and attempts is contemplated only in exceptional cases relating to instances in which the offences relate to sedition, counterfeiting, dacoity, etc (For instance, see Sections 121, 124, 124 A, 125, 131, 213, 239, 240, 241, 250, 251, 385, 387, 389, 391). Other than this, there are specific offences which specifically provide for a separate punishment for attempts. (For instance, see Sections 307, 308, 309, 393, 398) In these cases, the punishment for attempt is not equated with the punishment for the actual commission of the crime, but is a fraction thereof. In addition, Section 511 is a residuary section which deals with the punishment for attempts in case where the attempts are not covered by the two earlier categories. This section also provides for a sentence which is less than the sentence for the actual commission of the offence.

Besides, for coercion and intimidation, the Indian Penal Code already provides for sections to prosecute such crimes.

40. That the Petitioner wants to bring to the notice of this Hon'ble Court that days before the Ordinance was approved by the State of Uttar Pradesh's cabinet on 24.11.2020 and received the assent of the Governor on 28.11.2020, the High Court of Allahabad had passed an order dated 11.11.2020 saying that the Right to choose a partner from any faith and marrying him/her is intrinsic to Right to Life and Personal Liberty.

41. That in *Salamat Ansari and Ors vs State of Uttar Pradesh and Ors*, Cri. Misc. W.P No. 11367 of 2020, the Division Bench of the Allahabad High Court held that its previous rulings stating that religious conversion per se for contracting a marriage was prohibited and said marriage has no sanctity in law are incorrect and did not lay down "good law." That the judgment passed in *Salamat Ansari* has overturned the previous rulings of the same court of 2014 and 2020 where interfaith couples were not allowed to get protection from the Police as their marriage was held illegal. The important portions from the judgment are hereunder:

*"Right to live with a person of his/her choice irrespective of religion professed by them, is intrinsic to right to life and personal liberty. Interference in a personal relationship, would constitute a serious encroachment into the right to freedom of choice of the two individuals."*

*"We fail to understand that if the law permits two persons even of the same sex to live together peacefully then neither any individual nor a family nor even State can have objection to relationship of two major individuals who out of their own free will are living together,"*

*"None of these judgments dealt with the issue of life and liberty of two matured individuals in choosing a partner or their right to freedom of choice as to with whom they would like to live. We hold the judgments in Noor Jahan and Priyanshi as not laying good law."*

*“Once the alleged conversion was under clout, the Constitutional Court was obliged to ascertain the wish and desire of the girls as they were above the age of 18 years. To disregard the choice of a person who is of the age of majority would not only be antithetic to the freedom of choice of a grown up individual but would also be a threat to the concept of unity in diversity. An individual on attaining majority is statutorily conferred a right to choose a partner, which if denied would not only affect his/her human right but also his/her right to life and personal liberty, guaranteed under Article 21 of the Constitution of India.”*

*“We do not see Priyanka Kharwar and Salamat as Hindu and Muslim, rather as two grown up individuals who out of their own free will and choice are living together peacefully and happily over a year. The Courts and the Constitutional Courts in particular are enjoined to uphold the life and liberty of an individual guaranteed under Article 21 of the Constitution of India.”*

*“Decision of an individual who is of the age of majority, to live with an individual of his/her choice is strictly a right of an individual and when this right is infringed it would constitute breach of his/her fundamental right to life and personal liberty as it includes right to freedom of choice, to choose a partner and right to live with dignity as enshrined in Article 21 of the Constitution of India.”*

## **V. Right against Discrimination**

42. That Article 14 of the Constitution of India provides that every citizen is equal before the law and that everyone is subject to the same laws of justice. That, further, Article 15 and 16 enjoin on the State to treat all Citizens without Discrimination. That with the Act and Ordinance in place, only residents of Uttar Pradesh and Uttarakhand will be subject to such inquiry and State intervention if and when they decide to convert from one faith to the other. This is a discriminatory and arbitrary practice for every mature individual who would want to exercise his/her choice of conscience that will cease to exist given such laws in force. This Hon’ble Court in Kesavananda Bharti (supra),

had noted that equality of status and opportunities have not been put in the Constitution merely for individual benefits but have been put there as a matter of public policy.

43. That illegal conversion under the Ordinance attracts a punishment of 1-5 years in prison under section 5. However, if the victim of the illegal conversion is a minor, a member of the Scheduled Castes or Scheduled Tribes or, a woman, the punishment is doubled or twice the punishment if it were against a woman at 2-10 years behind bars. In cases of inter-faith marriages, it is reportedly usually women who convert to men's religion and it is therefore the harsher punishment i.e. upto 10 years imprisonment which would be invoked in most cases. Further, the provision views all women including economically weak, marginalised, privileged women to be susceptible to illegal conversions.

44. That section 12 of the Ordinance states that the burden of proof as to whether a religious conversion was effected through misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means or by marriage, lies on the person who has caused the conversion and, where such conversion has been facilitated by any person, on such other person. In criminal cases, the Burden of Proof is on the prosecution to prove the guilt whereas the accused is treated innocent until proven guilty. It is only under this Ordinance, all alleged accused will have to prove their innocence which is bleak as it is a non bailable offence and also under a circumstance where they are pitched against hostile communities and family members who

masquerade in the glory of protection of women. The complaints could be prosecuted at the mere *ipse dixit* of family members and any other third party without any evidence. This law will lead to a disproportionate consequence by terrorizing inter-faith couples and acting as a deterrent as under section 4, apart from an aggrieved person, his/her parents, brother, sister, or any other person who is related to him/her by blood, marriage, or adoption may lodge an FIR against illegal conversions. This can lead to grave misuse by the State and as the above historiography has shown, by favoured, non-State actors. Besides, by its very term and object, the Act and Ordinance both, turn specific and targeted eyes of suspicions on Muslims and Islam which is a sure fire recipe to engender suspicion, division and even hatred within Indian society militating against the Constitutional Vision, the Preamble and the Basic Structure Doctrine of the Indian Constitution.

45. That the Act and the Ordinance will further the harmful cause of stereotyping women and leave them with no agency of their body and mind. A stereotypical attitude of a particular sex shall not hold legitimate claims under the Constitution of India. This Hon'ble Court in *Indian Young Lawyers Association vs The State of Kerala*, (2019) 11 SCC, highlighted the need of equality between sexes, the importance of human liberty in matters of faith, belief, expression and worship. This judgment also emphasised the importance of the secular framework of India which treats all religions on an

even platform, allows individuals the liberty to believe or not to believe. The relevant portions of the judgment are quoted here:

*“215. The content of morality is founded on the four precepts which emerge from the Preamble. The first among them is the need to ensure justice in its social, economic and political dimensions. The second is the postulate of individual liberty in matters of thought, expression, belief, faith and worship. The third is equality of status and opportunity amongst all citizens. The fourth is the sense of fraternity amongst all citizens which assures the dignity of human life. Added to these four precepts is the fundamental postulate of secularism which treats all religions on an even platform and allows to each individual the fullest liberty to believe or not to believe.... The founding faith upon which the Constitution is based is the belief that it is in the dignity of each individual that the pursuit of happiness is founded. Individual dignity can be achieved only in a regime which recognises liberty as inhering in each individual as a natural right. Human dignity postulates an equality between persons. Equality necessarily is an equality between sexes and genders. Equality postulates a right to be free from discrimination and to have the protection of the law in the same manner as is available to every citizen. Equality above all is a protective shield against the arbitrariness of any form of authority. These founding principles must govern our constitutional notions of morality. Constitutional morality must have a value of permanence which is not subject to the fleeting fancies of every time and age. If the vision which the founders of the Constitution adopted has to survive, constitutional morality must have a content which is firmly rooted in the fundamental postulates of human liberty, equality, fraternity and dignity. These are the means to secure justice in all its dimensions to the individual citizen. Once these postulates are accepted, the necessary consequence is that the freedom of religion and, likewise, the freedom to manage the affairs of a religious denomination is subject to and must yield to these fundamental notions of constitutional morality....”*

*“...While the Constitution recognises religious beliefs and faiths, its purpose is to ensure a wider acceptance of human dignity and liberty as the ultimate founding faith of the fundamental text of our governance. Where a conflict arises, the quest for human dignity, liberty and equality must prevail. These, above everything else, are*

*matters on which the Constitution has willed that its values must reign supreme.”*

45.1 Unconstitutionality of laws which are based on gender stereotypes and which victimises women instead of empowering women was also discussed by this Hon’ble Court in the case of *Anuj Garg vs Hotel Association Of India & Ors* [(2008)3 SCC 1], wherein it was held,

*“36. Women would be as vulnerable without state protection as by the loss of freedom because of impugned Act. The present law ends up victimizing its subject in the name of protection. In that regard the interference prescribed by state for pursuing the ends of protection should be proportionate to the legitimate aims. The standard for judging the proportionality should be a standard capable of being called reasonable in a modern democratic society.”*

*“46. It is to be borne in mind that legislations with pronounced "protective discrimination" aims, such as this one, potentially serve as double edged swords. Strict scrutiny test should be employed while assessing the implications of this variety of legislations. Legislation should not be only assessed on its proposed aims but rather on the implications and the effects.”*

*51. The Court's task is to determine whether the measures furthered by the State in form of legislative mandate, to augment the legitimate aim of protecting the interests of women are proportionate to the other bulk of well-settled gender norms such as autonomy, equality of opportunity, right to privacy et al. The bottom-line in this behalf would a functioning modern democratic society which ensures freedom to pursue varied opportunities and options without discriminating on the basis of sex, race, caste or any other like basis. In fine, there should be a reasonable relationship of proportionality between the means used and the aim pursued.*

46. That Indian courts have reaffirmed the constitutional principles of dignity and equality that is intrinsic to the life of consenting adults, but the impugned Act and Ordinance turns its back on the Constitution. This sectarian law stands in the way of the secular principles, which is a unique stance of the Constitution of India, a gift to the rest of the world. In a secular multi faith

democracy, a law that criminalises freedom of choice and transgresses on a person's dignity should have no place.

## VI. Constitutional Obligations and Powers of Governors

47. That the Petitioners would like to point out that the impugned Act, the Uttarakhand Freedom of Religion Act, 2018 was tabled in the State Assembly on March 21, 2018, passed thereafter and received the Governor's assent on May 11, 2018 within two months. That in an even more hasty fashion, the impugned Ordinance the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020 received the Governor's assent on November 28, 2020.

47.1 The Indian Constitution recognizes several situations in which it is necessary in the interests of federal polity for state legislation to have the prior or later approval of the President. (Articles 288(2), 304(b), 254(2), 360(4)(a)(ii))

47.2. Other than these specific instances, the Governor has been entrusted with a general discretionary power under Article 200 to reserve bills for the assent of the President. There are no specific constitutional guidelines for the exercise of this power other than the mandatory requirement under the Second Proviso to Article 200 that the Governor shall reserve a Bill which derogates from the powers of the High Courts. The Article reposed in the Governor an independent power, which is not subject to judicial scrutiny. Thus in *Hoechst Pharmaceuticals*, (1983) 4 SCC 45 at Pr. 86, the Supreme Court states that:

*"In such a case, it is for the Governor to exercise his discretion and to decide whether he should assent to the Bill or should reserve it for*

*consideration of the President to avoid any future complication. Even if it ultimately turns out that there was no necessity for the Governor to have reserved a Bill for the consideration of the President, still he having done so and obtained the assent of the President, the Act so passed cannot be held to be unconstitutional on the ground of want of proper assent. This aspect of the matter, as the law now stands, is not open to scrutiny by the courts.”*

[Also *Bharat Sevashram Sangh vs. State of Gujarat* (1986) 4 SCC 51 at Para 6]

47.3 In the exercise of this power, the Governor thus has to be guided by Constitutional principles. By this logic, an essential exercise of this power would be in protecting the interests of the federal structure. Along with the protecting the federal structure, the Governor is also responsible for upholding Constitutional principles. Thus, the Governor has to also examine the legislation for possible impact on Constitutional provisions such as violation of the basic structure or of fundamental rights.

47.4 In conclusion, the Governor's power to reserve Bills for the consideration of the President has the following aspects:

- a. Mandatory exercise, such as under Second proviso to Article 200;
- b. In situations when the State Legislature does not have the competence to enact the statute; and
- c. A more general discretionary power to address issues of constitutional validity of the Bill herein Act or Ordinance.

47.5 Another issue which arises in the case of the Ordinance (Uttar Pradesh) is also whether the State was empowered in law to have enacted this law through an ordinance. The power to issue Ordinances is governed by Articles 123 (for the President of India) and 213 for the Governors. When the Assembly is not in session, the Governor has the power to issue Ordinance if he is satisfied that circumstances exist which render it necessary for him to take immediate action. So the first issue would be whether circumstances existed which rendered it necessary for the Governor to issue the Ordinance without awaiting Assembly Session. Factually, no such situation existed. There is no material to show that the concept of the fictitious term 'love jihad' is widespread or has been increasing at a rapid rate for such an Ordinance. A Special Investigation Team of Kanpur had carried out a study in September, 2020 across all police Stations in the city which showed that there were 14 pending cases of interfaith marriages which had reached the police and out of these in 8 cases there was no case made out at all. In the balance 6 cases the investigation was still pending. This was the only concrete study. It is humbly submitted that this was not a fit case for an Ordinance to be issued.

## **VII. Secularism**

48. That the impugned laws make the government assume the role of protecting religious identities of the people and demonstrates intolerance towards the religious choices of the people. This, in itself is an attack on the

secular fabric that holds Indian democracy together. The Constitution scheme of secularism is not a negative concept of religious tolerance. It is a positive concept which envisages that the State should have equal respect for all religions and refrain from discriminating between religions. This was recognized in the case of *Bommai v. Union of India*, (1994) 3 SCC 1 in which Jeevan Reddy J. observes (SCC paras)

*“.. while the citizens of this country are free to profess, practice and propagate such religion, faith or belief as they choose, so far as the state is concerned i.e., from the point of view of the State, the religion, faith or belief of a person is immaterial. To it, all are equal and all entitled to be treated equally.”*

49. To underline the significance of secularism as a part of the basic structure the Court in *Bommai* (1994) also stated that

*“Any step inconsistent with constitutional policy is, in plain word, unconstitutional”*

50. That it is clear that through the laws, the states are actively intervening in a partisan manner to protect to facilitate state intervention in the right to change one's faith. The apparatus created is far reaching and punitive in its effect. The overall effect would be to harass all propagation activity and question any genuine conversion. The impugned laws are not a neutral measure to protect vulnerable sections, but an attempt to activate religious policing to harass and intimidate religious minorities and unreasonably

intrude in their personal lives. In this light, this is contrary to the principle of secularism and thus violative of the basic structure of the Constitution.

### **VIII. Bhimrao Ramji Ambedkar's ideology**

51. That historically speaking, BR Ambedkar was among the most erudite – in a long line of Social Reformers and thinkers like Savitribai Phule, Jyotiba Phule, Ishwarchand Vidyasagar and Ram Manohar Roy-- to raise issues against the Oppression of Caste Exclusion, the Caste System itself and the liberation of women. His way of thinking about the caste and gender problems through the marital relations in a family was an idea unique to his observation. During the time of colonial period Babasaheb Ambedkar was in direct contact with the women sufferings of his own community and seen the realities of caste discrimination in day-to-day life as an insider belonging to the caste of untouchable community. He had made attempts to erase the stratification among the castes by promoting inter caste and inter community marriages, secularising the society we live in.

52. That the feminist in Ambedkar was visible in his seminal essay “Annihilation of Caste”, where he actually prescribed inter-caste marriage as the real remedy for the abolition of caste. Fusion of blood, he said, could alone create the feeling of being kith and kin and unless this feeling of kinship became paramount, the separatist feeling created by caste would not vanish. Dr Ambedkar had said that in a society which is torn asunder, marriage as a binding force becomes a matter of urgent necessity. The virulent times of today, thus, necessitate inter-caste and inter-faith marriage. While the law

needs to play an enabling role in facilitating them, the law alone is not sufficient, as the small percentage of such marriages clearly indicate. It is time society and family blessed these marriages unequivocally and heralded a change that this country critically needs. Let secularism not be a mere Constitutional ideal; a plural, heterogeneous and tolerant India demands secularism from every citizen. Laws which are anti-conversion are essentially crimes against women autonomy dictating terms on potential suitors from within the woman's community, caging her constitutional freedoms.

53. That Babasaheb Bhimrao Ambedkar's burning of Manusmriti, which yields enormous power over Indians, speaks volumes on his formulation of the intersectionality of gender and caste. He believed that the Manusmriti advises upper-caste men to guard their women closely so that no other man plants his seed in their wife/woman in order to ensure purity and continuity of caste. If this control over women is subverted, caste dies a quick death. Similar notions have been adopted by Governments while enforcing anti-conversion laws to stop women from exercising their right and clamping down on their liberty. The Petitioners crave leave to produce before the Court the full and true copy of the essay, *Anihilation of Caste* whenever necessary.

54. That criminalising every inter faith relationship until the State's blessings, and discouraging assertion of women voices is against the Constitutional vision that Babasaheb dreamt of. Interfaith marriages will soon be seen as conspiracy theories rather than personal matters of love and faith. The proviso to section 3 of the impugned Act and Ordinance classifies conversion

to Hinduism as a return to one's original faith, the ordinance makes Hinduism the single authentic faith for all Indians. In the same stroke, all other Indian religions get branded as products of force, fraud, coercion or seduction, in the present or in the past – hence illegitimate and deserving of annulment and punishment. The proviso to section 3 the Act reads:

*“Provided that, if any person comes back to his ancestral religion, shall not be deemed conversion under this Act. The proviso to section 3 of the Ordinance reads:*

*“Provided that if any person reconverts to his/her immediate previous religion, the same shall not deemed to be a conversion under the Ordinance.”*

#### **IX. State incentives for inter-faith marriages**

55. That both states, Uttar Pradesh and Uttarakhand have had state level schemes to incentivise inter-religious marriages within their states. The scheme in undivided Uttar Pradesh was introduced in 1976. The incentive then was Rs 10,000. In 2013, the incentive for inter-religious marriages was increased to Rs 50,000. The Intercaste and Interfaith Marriage Incentive Scheme was brought into effect in 1976 by the national integration department of the then Uttar Pradesh government. In order to avail the benefits under this scheme, an interfaith couple would have had to apply to the district magistrate within two years of the wedding and after verification, the couple is provided with a sum of money. In 2017 the Uttar Pradesh government brought out a rule that if the interfaith couple converted after they got married, they would then lose the incentive. A Times Now report

states that in 2019 “there were 11 beneficiaries from the scheme who got Rs 50,000 each, the *Times of India* said in a report. However, there have been no cases in 2020 and four applications that came in are still pending.” The report states that the state government of Uttar Pradesh is planning to roll back or terminate this scheme to align with its Ordinance that penalizes conversion by marriage. A true and correct copy of the report titled ‘After ‘love jihad’ law, Uttar Pradesh to now withdraw 4 decade-old incentive scheme for interfaith marriages’ dated 02.12.2020 published by Times Now is marked and annexed hereto as **ANNEXURE P-15** (Page No. \_\_\_\_ to \_\_\_\_ ) and another news report titled ‘Uttarakhand mulls ending Rs. 50, 000 monetary benefit for inter-faith marriages after ‘controversy’” dated 6.12.2020 is marked and annexed hereto as **ANNEXURE P-16** (Page No. \_\_\_\_ to - \_\_\_\_ )

56. That initially the State of Uttarakhand decided to pay Rs 50,000 to inter-caste and inter-faith couples to encourage such alliances. That the amount being given jointly to such couples was increased from Rs 10,000 to Rs 50,000 in Uttarakhand in 2014 through an amendment in the Uttar Pradesh Antarjatiya/Antardharmik Vivah Protsahan Niyamawali, 1976 which had been adopted when Uttarakhand was carved out of Uttar Pradesh in 2000.

57. That, it is clear that the Uttar Pradesh and Uttarakhand governments have step by step eroded the scheme that was promoting a progressive society and one that would encourage a society that sees beyond a religious

lens to imbibe and adopt principles of brotherhood, fraternity and secularism as embodied in the Constitution.

58. That some States are finally moving up the path of social reforms attempting to encourage the idea of a caste less society, one that Babasaheb envisaged to liberate men and women from the shackles of regressive notions and critical religious texts. The State of Maharashtra had planned to provide special concessions such as fee waiver to the children born out of inter caste and inter-religion marriages. In 2018, the Social Justice Minister of Maharashtra had said that the couples where spouses are from different religions or castes have to face various problems, including social boycott and the threat of honour killing and hence, besides other aspects, a law in place will focus on what kind of protection can be given to the couples who are facing such threat. Honour is in the attempt to achieve that glory by encouraging States to come up with incentives to encourage inter faith unions. The Act and the Ordinance aims to take ten steps backward against the spirit of national unity and fraternity. The Right to Love campaign run by Sushant Asha and Abhijit K in Maharashtra, both journalists cum social activists, helps inter religious couples facing opposition to avail protection by police, legal help to get marriage registered, counselling to deal with the mental pressure and also in finding job opportunities. With such laws in place impinging on your free will and right to conscience, the significance of the work and efforts put in by such individuals becomes even more stark. A true and correct copy of the report titled “Maharashtra plans to bring law to encourage inter-caste, inter-religion marriages” dated 06.05.2018 published

by The Indian Express is marked and annexed hereto as **ANNEXURE P-17** (Page No. \_\_\_ to \_\_\_). A true and correct copy of the report titled “Right to Love campaign protecting Interfaith and Inter caste Couples in Rural Maharashtra” dated 24.11.2020 published by The News Click is marked and annexed hereto as **ANNEXURE P-18** (Page No. \_\_\_ to \_\_\_).

59. That the Ordinance and the Act are in contravention to the progressive schemes that were a part of a common history shared by both states at one point which could contribute towards promoting religious harmony in the state.

#### **X. Law Commission Reports on Religious Conversion**

60. That the Petitioner relies on the 235<sup>th</sup> report of the Law Commission of India titled ‘Conversion/reconversion to another religion - mode of proof’ which states as follows:

4. The change from one religion to another is primarily the consequence of one’s conviction that the religion in which he was born into has not measured up to his expectations – spiritual or rational. The conversion may also be the consequence of the belief that another religion to which he would like to embrace would better take care of his spiritual well-being or otherwise accomplish his legitimate aspirations. At times it may be hard to find any rational reason for conversion into another religion. The reason for or propriety of

conversion cannot be judged from the standards of rationality or reasonableness.

The report, while speaking of compulsory registration of marriages stated:

14...Conversion which is bereft of any particular formalities or religious rites, cannot be placed on the same pedestal as marriage which can be recognized in law only if customary rites and ceremonies are gone through.

60.1. A reference is made in the report to a previous report of the Law Commission, the 211<sup>th</sup> report which had recommended that non-registration of marriage and divorce should be made an offence and secondly that no judicial relief shall be granted if the concerned marriage or divorce is not duly registered under the proposed Act. Clearly, this recommendation has not been adopted by the legislature, which demonstrates the unwillingness of the Union government to criminalize a personal law. Similarly, making intimation of religious conversion mandatory and prohibiting conversion by marriage is also against the Union's legislative will. A true and correct copy of the Law Commission 235<sup>th</sup> report titled 'Conversion/reconversion to another religion - mode of proof' dated 27.12.2010 is marked and annexed hereto as **ANNEXURE P-19** (Page No. \_\_\_ to \_\_\_)

60.2. That Sri M.N. Rao, former Chief Justice of H.P. High Court in his article titled 'Freedom of Religion and Right to Conversion' (2003) PL WebJour 19 observed as follows:

*“Right to conversion connotes individual right of a person to quit one religion and embrace another voluntarily. This kind of change from one religion to another religion must necessarily be in consequence of one’s conviction that the religion in which he was born into has not measured up to his expectations, spiritual or rational. Sometimes it may also be the result of losing faith in one’s own religion because of the rigidity of its tenets and practices. Sometimes one may even lose total faith in the very concept of the existence of God and turn to Atheism. A change of religion, a consequence of any of the above reasons, falls within the ambit of the “Right to Conversion”*

That, it is this freedom of conscience and faith as well as possibility of losing faith in one’s own religion that the Ordinance and Act disregard.

60.3. That National Family Health Survey 2015-16 data suggests that only 2.6% marriages in India are inter-religious marriages. With such a small data point, two states in the country are trying to reduce the meagre number even further. Laws are being brought in place for a crime that has not shown incidence and is a mere conjecture and societal discourse augmented in only past few years. Instead of trying to curb the 2.6% inter-religious marriages, as we progress as a society, diversity and unity ought to be promoted and a society that is a milieu of all cultures in India ought to be encouraged. A true and correct copy of article titled ‘Age, caste, job, education: What data on couples in India shows’ dated 03.10.2018 published by Hindustan Times is marked and annexed hereto as **ANNEXURE P-20** (Page No \_\_\_ to \_\_\_)

## **XI. International law**

61. That in International law, the standards for freedom of speech, expression, opinions, have been protected by relevant treaties for important causes of socio-cultural assimilation of a community and also facilitate large scale integration of minority communities. Article 16 of the Universal Declaration of Human Rights (UDHR) protect the rights of men and women who have the right to marry when they are legally able without limits due to race, nationality or religion. Families should be protected by the Government and the justice system. The Article states:

1. “Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”

61.1. That the State which is entrusted with the protection of its citizens is being given such liberty-destroying power that gives them the license to intrude dangerously into personal decisions like marriage choices with an intent to prove it fraudulent. Anti-conversion laws of Uttar Pradesh and Uttarakhand assume all conversions are forced and for the sake of marriage, hence must be annulled. Article 18 of UDHR protects the rights to freedom of religion or belief. Article 18 states:

“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

62. That such laws violate international clauses that seek to uphold a person’s right to choose a faith and practice it as their conscience allows. The Petitioner wants to stress how such legislations impose a forced collective identity on individuals. The liberty to choose one’s own spiritual path is enshrined in India’s Constitution. The state should have no role on who a citizen chooses to love or which God she/he chooses to worship.

63. That the International Covenant on Civil and Political Rights also lays down significant clauses that safeguards a person’s civil, political, economic, social and cultural rights. Article 18 lays down the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. The impugned legislations are reinforcing social asymmetries to further and also acting as a threat to the very existence of India’s most robust cultural institution – marriage.

64. That at the United Nations General Assembly’s 72<sup>nd</sup> Session an interim report of the Special Rapporteur on freedom of religion or belief, Ahmed

Shaheed was submitted which was titled 'Elimination of all forms of religious intolerance'. The report called anti-conversion laws to be "invasive manifestations of intolerance based on religion". The report further states that, "Anti-blasphemy, anti-apostasy and anti-conversion laws, some of which are falsely presented as "anti-incitement" legislation, often serve as platforms for enabling incitement to discrimination, hostility or violence against persons based on religion or belief. Such laws also frequently afford varying levels of protection to different religions and are often applied in a discriminatory manner." A true and correct copy of the report titled 'Elimination of all forms of religious intolerance' dated 28.08.2017 submitted at the United Nations General Assembly by the Special Rapporteur on freedom of religion or belief is marked and annexed hereto as **ANNEXURE P-21 (Page No. \_\_\_ to \_\_\_)**

## **XII. Evolution of Rights in Constitutional Courts and Interpretation of Law and Legislation**

65. Countries emerge and their Constitutional rights also evolve through a progression of tests, individual and collective rights, checks and balances, and interpretations in Constitutional Courts. These in turn emerge out of real life situations that test the concept of these rights and what they were meant to guarantee. Forty three years ago, in 1977 when the Supreme Court decided the Stainislaus matter, key Constitutional tools were not available. Many of these have evolved in India's Constitutional Courts through jurisprudence, when individuals and communities tested constitutionality

through an assertion of their rights. Interpretations of, for instance the Right to Life have since expanded and used to guarantee several aspects of life and dignity including the Right to Privacy, Asylum and Education:

1. In 1977, the challenge under Article 14- the equality and equal protection clause was available only on the test of reasonable classification (intelligible differentia) and nexus between classification and object of the law. For a legislation to be valid against a challenge under Article 14, there had to be a classification between those included and those excluded by the legislation, such classification had to be reasonable and such classification needed to have nexus with the object sought to be achieved.
2. Thus the only way to challenge a legislation under Article 14 was basically the hostile discrimination test. In recent times, however, the Supreme Court has also applied the 'manifest arbitrariness' test to strike down laws such as was done in *Shreya Singhal* (2015 5 SCC 1) and Triple talaq case (*Shayara Bano* 2017 9 SCC 1). This means that even if the classification is valid and has a nexus with the object sought to be achieved, a legislation can be struck down if it is manifestly arbitrary. It was held in *Shayara Bano's* case,

*"101. ... The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We*

*are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14.”*

3. Now there is no controversy about right to privacy being a fundamental right coupled with the Supreme Court’s observation in Puttaswamy’s case as dealt with extensive in Paras 30-31 above that this right applies not only to spatial privacy but also relational privacy and the right to make personal choices.

Similarly In *Common Cause v. Union of India* (2018 5 SCC 1), a Constitutional Bench of the Supreme Court held:

*“346. ... Our autonomy as persons is founded on the ability to decide: on what to wear and how to dress, on what to eat and on the food that we share, on when to speak and what we speak, on the right to believe or not to believe, on whom to love and whom to partner, and to freely decide on innumerable matters of consequence and detail to our daily lives.”*

In *Navtej Singh Johar v. Union of India* (2018 10 SCC 1), the Supreme Court held:

*“474. The right to privacy enables an individual to exercise his or her autonomy, away from the glare of societal expectations. The realisation of the human personality is dependent on the autonomy of an individual. In a liberal democracy, recognition of the individual as an autonomous person is an acknowledgment of the State's respect for the capacity of the individual to make independent choices.*

*“613. The choice of a partner, the desire for personal intimacy and the yearning to find love and fulfilment in human relationships have a universal appeal, straddling age and time. In protecting consensual intimacies, the Constitution adopts a simple principle: the State has no business to intrude into these personal matters. Nor can societal*

*notions of heteronormativity regulate constitutional liberties based on sexual orientation.”*

4. Earlier, the misuse or potential misuse of law was never a ground for striking down a law. Since the judgment in Navtej Singh Johar’s case there is some progress towards looking at the misuse and impact of the law. Besides, this Hon’ble Court has also observed that just because a legislation is facially neutral does not mean it is Constitutional. One has to look at the impact. Paras 13, 16 from Navtej Singh Johar’s case which equally apply in the present case, both in terms of misuse and in terms of likely impact.

There are enough examples to show that such anti conversion laws have been used to target marginalised minority communities and have never been used to stop ‘Ghar wapsi’ a euphemism for converting back to a religion.

65.1 Legislation Laws and sections of the law are increasingly assessed not just in the formal wordings but on the socio economic political context and the extent of arbitrary power it gives to the executive .Traditionally Constitutional Courts have largely held that potential misuse or even actual misuse of a law is not a ground to strike down a legislation. However in recent times there has been a change- especially as was viewed in the Supreme Court judgment concerning decriminalising homosexuality where one of the grounds on which some of the judges held it to be unconstitutional was its effect and misuse.

In the facts and circumstances stated hereinabove, the Petitioner is filing the present petition on the following amongst other grounds which are set out without prejudice to each other:

**GROUND**S

- A. Because the right to convert oneself to another religion is manifested in Article 25 of the Constitution and the Ordinance and the Act impinge upon this right by imposing unreasonable and discriminatory restrictions and hence are unconstitutional;
- B. The idea of a particular individual converting for the sake of marriage on his/her own will is a matter of Personal Choice, Autonomy, Privacy, Conscience –all basic and Fundamental Rights under Articles 14, 15,16, 19, 21 and 25 of the Constitution, and cannot be merely related to ‘disruption of public order, as enumerated under Article 25 of the Constitution’.
- C. Because this Hon’ble Court has been laying down for decades including in *Kesavananda Bharati and ors vs. State of Kerala and Anr* (supra) , that the basic structure of the Constitution is built on the basic foundation, i.e., the dignity and freedom of the individual and the duty of the State is not limited to the protection of individual interest but extends to acts for the achievement of the general welfare in all cases where it can safely act.

D. Because this Hon'ble Court in the case of *Anuj Garg vs Hotel Association Of India & Ors* [(2008)3 SCC 1] has discussed the unconstitutionality of laws which are based on gender stereotypes and which victimises women instead of empowering women. The Court in this case discusses the importance of autonomy of women and not crippling that under the garb of their protection. It was held,

*“36. Women would be as vulnerable without state protection as by the loss of freedom because of impugned Act. The present law ends up victimizing its subject in the name of protection. In that regard the interference prescribed by state for pursuing the ends of protection should be proportionate to the legitimate aims. The standard for judging the proportionality should be a standard capable of being called reasonable in a modern democratic society.”*

E. Because even while upholding state imposed restrictions on conversions, *Rev Stanislaus vs Madhya Pradesh* 1977 SCR (2) 611, this Hon'ble Court held that subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

F. Because both the act and the ordinance do not factor that in *Bommai v. Union of India*, (1994) 3 SCC 1, this Hon'ble Court held that while the citizens of this country are free to profess, practice and propagate such religion, faith or belief as they choose, so far as the state is concerned i.e., from the point of view of the State, the religion, faith or belief of a person is immaterial. To it, all are equal and all entitled to be treated equally. Any step inconsistent with constitutional policy is, in plain word, unconstitutional.

G. Because in *Shafin Jahan vs Ashokan K.M*, it was held that (2018 16 SCC 368), intimacies of marriage, including the choices which individuals make on whether or not to marry and on whom to marry, lie outside the control of the state. Interference by the State in such matters has a seriously chilling effect on the exercise of freedoms. It was held,

*“The superior courts, when they exercise their jurisdiction parens patriae do so in the case of persons who are incapable of asserting a free will such as minors or persons of unsound mind. The exercise of that jurisdiction should not transgress into the area of determining the suitability of partners to a marital tie. That decision rests exclusively with the individuals themselves. Neither the state nor society can intrude into that domain. The strength of our Constitution lies in its acceptance of the plurality and diversity of our culture. Intimacies of marriage, including the choices which individuals make on whether or not to marry and on whom to marry, lie outside the control of the state. Courts as upholders of constitutional freedoms must safeguard these freedoms. The cohesion and stability of our society depend on our syncretic culture. The Constitution protects it. Courts are duty bound not to swerve from the path of upholding our pluralism and diversity as a nation.”*

H. Because in *Shakti Vahini vs Union of India and Ors* (supra), it was held by this Hon'ble Court that, *“Assertion of choice is an in-segregeable facet of liberty and dignity. this right of enjoyment of liberty deserves to be continually and zealously guarded so that it can thrive with strength and flourish with resplendence. The choice of an individual is an inextricable part of dignity, for dignity cannot be thought of where there is erosion of*

*choice. If the right to express one's own choice is obstructed, it would be extremely difficult to think of dignity in its sanctified completeness.”*

- I. While upholding “right to privacy”, this Hon’ble Court *KS Puttaswamy v Union of India*, reported in (2017) 10 SCC 1 held that, “Privacy is the constitutional core of human dignity. Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Personal choices governing a way of life are intrinsic to privacy. The destruction by the State of a sanctified personal space whether of the body or of the mind is violative of the guarantee against arbitrary State action.”
- J. Because in *Indian Young Lawyers Association vs The State of Kerala* (supra) it was held that “While the Constitution recognises religious beliefs and faiths, its purpose is to ensure a wider acceptance of human dignity and liberty as the ultimate founding faith of the fundamental text of our governance. Where a conflict arises, the quest for human dignity, liberty and equality must prevail”
- K. That the impugned laws make the government assume the role of protecting religious identities of the people and demonstrates intolerance towards the religious choices of the people. This, in itself is an attack on

the secular fabric that holds Indian democracy together. The Constitution scheme of secularism is not a negative concept of religious tolerance;

- L. Because even the Law Commission of India in its 235<sup>th</sup> report titled 'Conversion/reconversion to another religion - mode of proof' which states as follows:

*"4. The change from one religion to another is primarily the consequence of one's conviction that the religion in which he was born into has not measured up to his expectations – spiritual or rational. The conversion may also be the consequence of the belief that another religion to which he would like to embrace would better take care of his spiritual well-being or otherwise accomplish his legitimate aspirations. At times it may be hard to find any rational reason for conversion into another religion. The reason for or propriety of conversion cannot be judged from the standards of rationality or reasonableness."*

- M. Because in *Salamat Ansari and Ors vs State of Uttar Pradesh and Ors* (supra), it was held that, "Right to live with a person of his/her choice irrespective of religion professed by them, is intrinsic to right to life and personal liberty. To disregard the choice of a person who is of the age of majority would not only be antithetic to the freedom of choice of a grown-up individual but would also be a threat to the concept of unity in diversity. An individual on attaining majority is statutorily conferred a right to choose a partner, which if denied would not only affect his/her human right but

also his/her right to life and personal liberty, guaranteed under Article 21 of the Constitution of India.

- N. Because the Ordinance and the Act even otherwise are discriminatory and ultra vires the constitution as it equates “marriage” with other criminal acts like “force”, “coercion”, “fraudulent means”;
- O. Because by making no exception for cases registered under the Special Marriage Act, 1954, which is a central act, both the ordinance and the Act are hit by repugnancy and hence liable to be struck down;
- P. Because the act and ordinance seek to shift the *burden of proof on the person accused of the crime thereby equating these acts, which are otherwise not criminal acts, to acts of terror*;
- Q. Because the legislators have failed to appreciate that interference by the State in personal matters protected by the Constitution has a seriously chilling effect on the exercise of freedoms. Others are dissuaded to exercise their liberties for fear of the reprisals which may result upon the free exercise of choice. The chilling effect on others has a pernicious tendency to prevent them from asserting their liberty. Public spectacles involving a harsh exercise of State power prevent the exercise of

freedom, by others in the same milieu. Nothing can be as destructive of freedom and liberty.

R. Because the act and the Ordinance ignore that principle upheld by this Hon'ble Court that *"Privacy is a concomitant of the right of the individual to exercise control over his or her personality. It finds an origin in the notion that there are certain rights which are natural to or inherent in a human being. Natural rights are inalienable because they are inseparable from the human personality. "Natural rights are not bestowed by the State. They inhere in human beings because they are human. They exist equally in the individual irrespective of class or strata, gender or orientation."*

S. Because the Act and the ordinance ignore that as held by the Hon'ble High Court of Allahabad, *"Right to live with a person of his/her choice irrespective of religion professed by them, is intrinsic to right to life and personal liberty. Interference in a personal relationship, would constitute a serious encroachment into the right to freedom of choice of the two individuals."*

T. Because the Act and ordinance fail to appreciate that the Constitution of India grants equality, liberty and freedom and as matters or right and

these legislations encourage surveillance and grant unbridled powers to law enforcement;

U. Because the Act and Ordinance must be viewed in terms of their intent and impact and already these have been deleterious to individual freedoms in the concerned States.

V. Because above all the above, both the Act and Ordinance are inherently anti women and discriminate against women, giving them no agency whatsoever and are therefore bad even on this count



In the facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- a) Issue a writ of certiorari or any other appropriate writ order or direction to declare the impugned Act - Uttarakhand Freedom of Religion Act, 2018 ultra vires of the Constitution of India;
- b) Issue a writ of certiorari or any other appropriate writ order or direction to declare the impugned Ordinance - Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020, ultra vires of the Constitution of India;
- c) Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

**AND FOR THIS ACT OF KINDNESS, THE PETITIONERS AS IN  
DUTY BOUND SHALL EVER PRAY.**

Filed by:

Advocate-on-Record for the Petitioners

Place: New Delhi

Filed on: 14.12.2020



**IN THE SUPREME COURT OF INDIA**

**ORIGINAL WRIT JURISDICTION**

**I.A NO. \_\_\_\_\_ OF 2020**

**IN**

**WRIT PETITION (CRIMINAL) NO. \_\_\_\_\_ OF 2020**

**IN THE MATTER OF:**

CITIZENS FOR JUSTICE AND PEACE

THROUGH SECRETARY

...PETITIONER



**VERSUS**

STATE OF UTTAR PRADESH & ANR.

...RESPONDENTS

**APPLICATION SEEKING STAY OF THE IMPUGNED ACT**  
**AND THE IMP UGNEDORDINANCE**

TO

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS LORDSHIP'S COMPANION JUSTICES OF THE

HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF  
THE ABOVE NAMED  
PETITIONERS / APPLICANTS

**MOST RESPECTFULLY SHOWETH:**

1. That the Petitioner / Applicant is filing the accompanying Writ Petition praying for an appropriate writ for quashing the Uttarakhand Freedom of Religion Act, 2018 (**The Act**) and the passing of the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020 (**The Ordinance**) which are wholly in contravention with the law, the Constitution of India as well as the decisions of this Hon'ble Court.
2. That the Applicant seeks leave to rely upon the contents of the accompanying Writ Petition for the sake of brevity.
3. That since the time the impugned Act and the Ordinance have come in to force, there have been several instances of undue harassment and violence under the garb of these laws.
4. That it can be seen from the news reports annexed to the Writ Petitions at Annexures P-11 and P-14, that the police has been intervening in marriage ceremonies being conducted between consenting adults, solely based on rumours. In fact in one of these cases, both the parties were from the same religion and yet the police had interfered and harassed the parties.
5. That in case the impugned Act and Ordinance are not stayed, the harassment and violence based on these unconstitutional and illegal laws will continue, violating the fundamental rights of the citizens of this country.
6. That personal liberty and freedoms enshrined under Part III of the Constitution of India ought not to be shackled and crippled by way of arbitrary and unjust laws.

7. That the present Application is bona fide and made in the interest of justice.

**PRAYER**

In the facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- a) Stay the operation of Uttarakhand Freedom of Religion Act, 2018;
- b) Stay the operation of Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020, ultra vires of the Constitution of India;
- c) Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

**AND FOR THIS ACT OF KINDNESS, THE PETITIONERS /  
APPLICANTS AS IN DUTY BOUND SHALL EVER PRAY.**

Advocate-on-Record for the Petitioners

Place: New Delhi

Filed on: 14.12.2020